

POWER AND CONSENSUS

**AN ANALYSIS AND DESCRIPTION OF THE NATURE OF LABOUR RELATIONS,
WITH SPECIFIC REFERENCE TO LABOUR DISPUTES AND THEIR SETTLEMENT
IN SOUTH AFRICAN LOCAL AUTHORITIES.**

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ABSTRACT

The aim and intention of this thesis is to critically describe the theoretical and practical applications of labour relations practices in the public sector internationally and in South African local authorities. In particular, this objective involves a description of the following key themes: A background to labour relations theory, the role of parties to the labour relationship, the premises of labour relations, the causes of labour conflict, the processes of dispute resolution and settlement, and applied dispute settlement approaches.

A literature survey highlights the key concepts and principle labour conflict resolution measures applied internationally. In South Africa the above-noted labour relations themes are examined by means of a standardised-schedule delphi questionnaire which addresses the approaches adopted and related concerns of all Grade 10-15 local authorities (as in 1992).

This thesis highlights the desire to institutionalise labour conflict in the organisation as a dynamic management concern. Findings indicate that in the public sector internationally labour relations are complicated by a number of unique environments, notably, the political, social, economic, legislative and the organisational environments, within which the organisation must function. Subsequently, applied practices are characterised by restrictive measures which limit the scope of fundamental labour rights, especially the right to associate, the right to bargain and the right to strike. In this context, it is submitted that the use of power-driven processes, as commonly employed by public sector organisations, fail to institutionalise labour conflict effectively. This finding is based on the evidence of increasing labour disputes in this sector since the 1960's.

Similarly, a variety of unique environmental pressures and constraints have resulted in piecemeal labour relations arrangements in South African local authorities. Therefore, in terms of the above indicators, this thesis concludes that the recent growth in the incidence of labour disputes reflects a failure on the part of these organisations to effectively institutionalise labour conflict. In particular, this failure is ascribed to inflexible or inconsistent legislation, a lack of shared commitment by parties to the labour relationship, an inequitable distribution of powers and the provision of inadequate safeguards for protecting group interests.

In conclusion it is submitted that the currently restrictive power-driven measures or processes applied by South African local authority employers ought to be replaced by consensus-based practices. This involves accommodating trade union interests, simplifying existing legislation, streamlining dispute settlement structures and facilitating measures or attitudes which engender mutual trust.

CHAPTER ONE

INTRODUCTION

1. Introduction:

Labour relations is a recent management function, having evolved during the latter part of this century.¹ Three key actors comprise the labour relationship, namely: employers, trade unions and the State. The primary purpose of labour relations is to institutionalise endemic labour conflict, notably between employers and trade unions. Such conflict can be either functional (by engendering new dynamics within the service or production process) or dysfunctional (by disrupting the service mission of an organisation²). Therefore, it can be seen that the latter form of conflict undermines the labour relationship and threatens to disrupt organisational services or outputs. Subsequently, a variety of processes, structures and mechanisms can be applied to regulate labour disputes. However the viability of a labour relations system is contingent on its approval by the parties concerned.

Labour disputes, notably industrial action, have increased in the public sector internationally (International Labour Office, 1986:69; Treu, T. *et al*, 1987:7-22). This trend can be attributed to a number of unique political, social, economic, legislative and organisational environments. These factors have usually led to the adoption of highly restrictive labour relations practices within this sector. Subsequently, it can be said that these labour relations systems have failed to institutionalise dysfunctional conflict effectively.

Similar developments in South African local authorities have led to an increase in the incidence of industrial action. The use of such processes can be ascribed to a fundamental desire for the redistribution of power within the labour relationship.

However, the desire to accommodate trade union interests in an equitable and effective manner is undermined by a variety of factors which ultimately entrench the existing *status quo* of parties to the labour relationship within South African local authorities.

This thesis analyses and describes these factors within a South African local authorities labour relations context and its application in the public sector internationally. A more detailed explanation of this intent follows.

2. Objective of this thesis:

The objective of this thesis is to critically describe and examine the nature of labour relations, and in particular, the manner in which labour disputes are resolved and settled in South African local authorities. This description and analysis involves the following six themes:

- * A background to labour relations;
- * The parties to the labour relationship;
- * The premises of labour relations;
- * The causes of labour conflict;
- * The processes of dispute resolution and settlement; and
- * The approaches to dispute settlement.

The objective of each Chapter is summarised below.

2.1 Chapter One:

The objective of this chapter is to introduce a background to the features and issues relating to the nature of labour relations in South African local authorities, the research methodology applied and the limitations of this thesis.

2.2 Chapter Two:

The objective of this chapter is to describe a background to the nature of labour relations theory and practice.

2.3 Chapter Three:

The objective of this chapter is to outline a background to the nature of labour disputes and their settlement.

2.4 Chapter Four:

The objective of this chapter is to outline a background to the nature of labour relations in the public sector from an international perspective.

2.5 Chapter Five:

The objective of this chapter is to outline a background to the nature of labour disputes and their settlement in the public sector from an international perspective.

2.6 Chapter Six:

The objective of this chapter is to outline the nature of labour relations practice in South African local authorities.

2.7 Chapter Seven:

The objective of this chapter is to outline the nature of labour disputes and their settlement in South African local authorities.

2.8 Chapter Eight:

The objective of this chapter is to set out the perceptions and opinions of local authority labour relations practitioners, trade unionists and other relevant officials regarding the current state of labour relations in South African local authorities.

2.9 Chapter Nine:

The objective of this chapter is to provide an overview of the key findings and trends described in previous chapters, to critique labour relations practices in South African local authorities and in this context, to list a number of recommendations for improving applied processes within this sector.

3. Methodology:

Both a qualitative and quantitative research approach was adopted. This involved:

- * A literature review;
- * Interviews; and
- * A delphi questionnaire.

3.1 Literature review:

A literature review was used in order to establish a relevant topic and the framework for analysis. Sources used were books, newspapers, periodicals, journals, unpublished papers, research reports, public documents, government gazettes and primary forms of media.

3.2 Interviews:

A preliminary survey was performed by face-to-face non-schedule interviews with personnel managers and trade unionists in the Cape Town City Council between June

and July 1990. The purpose of this survey was to corroborate these findings with those made in the initial literature review, thereby indicating further possible avenues for research.

A second survey was conducted in all the four provinces (pre-1993 constitution) between July 1990 and May 1992 by means of face-to-face and telephonic, open-schedule interviews. The purpose of the survey was to establish key labour relations developments and trends in South African local authorities. Cities chosen for this survey included: Bloemfontein, Cape Town, Durban, Johannesburg, Kimberley, Port Elizabeth and Pretoria. The sample target group, from a wide variety of backgrounds, comprised labour relations practitioners, trade unionists, State officials and academics involved in local authority labour relations. These were:

- * Tertiary institutions (Universities);
- * Local authorities (Grade 10-15);
- * Trade unions and professional associations;
- * Government bodies and advisory groups;
- * Industrial Courts; and
- * Industrial Councils.

The data gleaned during both South African surveys laid the foundations for a delphi questionnaire, the findings of which are discussed in Chapter Eight.

3.3 Delphi questionnaire:

The following are the features of the delphi questionnaire:

- * The target group;
- * The questionnaire design;
- * The questionnaire process; and
- * The response rate.

3.3.1 Target group:

The questionnaire surveyed the opinions of the most senior individuals involved in local authority labour relations.

Participants were classified into the following categories:

- * *Employers:* Grade 10-15 local authority officials involved in labour relations practices;
- * *Trade unions:* Senior members of trade unions and professional associations represented in Grade 10-15 local authorities; and
- * *the State:* Senior members of institutions assisting in the regulation of labour relations practices and labour disputes in local authorities.

Annexure 1A outlines a list of the respondents' occupations.

The selection of Grade 10-15 local authorities³ was based on their size and geographic representation (i.e. all the major town and city local authorities in all four provinces of South Africa) in 1992. This sample comprised according to representative parties:

- * *Employers:* 29 local authorities;
- * *Trade Unions:* 29 local authority trade unions and professional associations; and
- * *The State:* 17 individuals representing various Industrial Councils, Industrial Courts, mediatory organisations, government departments and advisory bodies.

3.3.2 Questionnaire design:

A standardised schedule of common themes⁴ was submitted in three formats to each party, namely the *employers*, *trade unions* and the *State*. The questions were derived from the preliminary surveys and comprised *fixed-alternative* and *scale* item choices.⁵ Space for additional commentary was provided at the end of the questionnaire.

The questionnaire provided a covering letter which explained the nature and purpose of this survey. Respondents were assured of their anonymity and they were offered a synopsis of findings in return for their participation. A stamped self-addressed envelope was included to assist the rate of response.

Annexure 1B-1D are samples of the questionnaire sent to each party.

3.3.3 Process:

This questionnaire was posted in September 1992 to the target group described above. Questionnaire returns were received between November 1992 and October 1993. Reasons given for late returns included: misfiled documentation, incorrect addresses, and a number of vacant posts to which this questionnaire was sent. Each participant was notified and thanked for their response and advised that a synopsis of findings was being sent to them. These findings were posted to all the respondents between October and November 1993.

3.3.4 Response rate:

The response rate was calculated by a comparison of questionnaires sent and returned for each party. The response rate was:

- * *Employers* = 69%
- * *Trade Unions* = 42%
- * *The State* = 30%.

It can be concluded that the above return rate was highly successful on a mean expected average return rate of 25%.

3.4 Overseas research:

International research, in the form of a literature review and non-scheduled face-to-face interviews, was conducted during February 1991 in Zimbabwe (Harare and Buluwayo Town Councils).

Further research was conducted between May and July 1992 in various European and East European countries. The sample group included academics and local authority officials in Belgium (The Commission of the European Communities), Poland (University of Warsaw, the Foundation in Support of Local Democracy and the New Democracy and Local Governance International Research Program), Switzerland (University of Zurich and the International Labour Organisation in Geneva) and the United Kingdom (London School of Economics). The purpose of these surveys was to establish a comparative background to key labour relations trends and issues in the public sector, and wherever possible, in local authorities.

These findings form part of Chapter Four and Chapter Five.

4. Limitations of this thesis:

The following shortcomings could possibly have impeded the analysis and findings presented in this thesis:

- * The paucity of material on labour relations in local authorities, both internationally and in South Africa;
- * The limitations of the trends established in Chapter Seven regarding the nature of industrial action during the period 1988-1992;⁶

- * The potential influence of participant bias or subjectivity on the findings established in Chapter Eight;
- * By their nature, some of the questions might have lacked statistical rigour in qualifying responses to the delphi questionnaire; and
- * The writer's own interpretation of the above themes.⁷

5. Conclusion:

In spite of the inherent limitations of this thesis, it is submitted that the current labour relations approach in South African local authorities requires a number of modifications. These recommendations are listed in Chapter Nine.

CHAPTER TWO

A BACKGROUND TO LABOUR RELATIONS.

1. Introduction.

This chapter outlines a background to the theory and practice of labour relations, notably:

- * The concept of labour relations;
- * Applied labour relations frames of reference;
- * The parties comprising the labour relationship; and
- * The premises on which labour relations are conducted.

2. The concept of *Labour Relations*.

Labour relations encompass the following foci:

- * "Work" and the working person;
- * The problems and issues of modern, industrial and post-industrial society; and
- * The existing relations within any applied paradigm.

(Bendix, 1989:3)

These foci are influenced by a multiplicity of disciplines, notably, economics, psychology, anthropology, political science, and sociology (Gerber, Nel & van Dyk, 1992:375).

Subsequently, *labour relations* can be characterised as an inter-disciplinary concept.

2.1 A definition of *Labour Relations*:

A variety of definitions are applied in practice (Green in Mol & Swanepoel, 1993:56; Siegel & Myrtle, 1985:383). However, *labour relations* can be broadly described as an interactive framework in which parties partake in the "making, change, interpretation and administration [of] terms and conditions of employment and the rules of work" (Poppleton, 1985:10). This process is characterised by the "*active management* (own italics) of every aspect of the working relationship" through relevant group interests (Fick & Hugh High, 1987:52).

For the purpose of this thesis, *labour relations* refers to:

A process of interaction between significant parties to the labour relationship regarding matters of mutual interest.

3. Frames of reference:

Due to their dynamic nature, a variety of labour relations approaches can be adopted. Such practices are based on a "common ideology or set of beliefs". (Bendix, 1989:13; Poppleton, 1985:12) These tenets can be broadly distinguished by three main frames of reference, namely, the Unitarist, Pluralist and Radicalist perspectives.¹

3.1 The Unitarist frame of reference:

The Unitarist frame of reference states that all parties to the labour relationship share a common goal, namely to fulfil organisational objectives. This process involves the right of employers to determine and regulate the employment relationship. On the other hand, trade unions are subject to the constraints imposed upon them by management. Subsequently, they are nominally expected to advise² or seek consensus³ with employers⁴ over matters of mutual concern. (Bendix, 1989:14; Childs, 1987:74)

3.2 The Radicalist frame of reference:

The Radicalist frame of reference states that all parties to the labour relationship have common interests and are therefore united in their goal to serve society. This view is founded on the notion that no true balance of power can be established.⁵ (Bendix, 1989:16; Hethy, 1989:115)

3.3 The Pluralist frame of reference:

The Pluralist frame of reference states that parties to the labour relationship share a common organisational vision. A key feature of this process is the need for a balance of powers between all parties in the labour relationship. Subsequently, employers and trade unions are expected to negotiate matters of mutual concern in the workplace. (Bendix, 1989:14; Childs, 1987:74)

3.4 Frame of reference applied to this thesis:

All three models are useful for understanding the prevailing dynamics of labour relations. It is even suggested that a new perspective, incorporating all three approaches, is a likelihood in the future (Bendix, 1989:16). For the purposes of this thesis, the Pluralist frame of reference is applied.

4. Parties to the labour relationship:

The labour or tripartite relationship is made up of three principle parties, namely, the employers, trade unions and the State. The role of each of party within the labour relationship is briefly described.

4.1 Employers:

A definition and brief description of the role of employers in the labour relationship follows.

4.1.1 A definition of *employer*:

An *employer* can be defined as:

"any person whosoever who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him or who permits any person whomsoever in any manner to assist him in the carrying on or conducting of his business."

(Bendix, 1989:388)

4.1.2 Role of employers in the labour relationship:

Employers "provide or withhold employment and ... reward those in employment" in order to fulfil organisational outputs or service objectives⁶ (Alfred, 1984:19). Therefore, the primary role of employers in the labour relationship is to protect their fundamental privileges (Windmuller & Gladstone, 1984:8). In particular, employer's demand the following rights:

- * The right to choose competent labour;
- * The right to provide instruction or training of employees and to ensure the satisfactory fulfilment of job demands;
- * The right to dismiss or retrench employees on the basis of incompetence, incompatibility, misconduct or general redundancy;
- * The right to replace labour where withheld; and
- * The right to refuse wages where conditions of employment are not fulfilled.

(Landman, 1990b:6)

Furthermore, these rights and interests can be protected by representative associations whose functions, *inter alia*, include:

- * Regulating and identifying organisational service matters;
- * Consolidating views on key matters and concerns;⁷
- * Constructing labour relations services and personnel practices if necessary; and
- * Formulating specific approaches to changing social pressures or labour legislation.

(Sing & Maharaj, 1990:46; Windmuller & Gladstone, 1984:1)

4.2 Trade unions:

A definition and brief description of the role of trade unions in the labour relationship follows.

4.2.1 A definition of trade union:

A *trade union* can be defined as:

"A continuing permanent organisation created by workers to protect themselves at their work, to better the conditions of their lives, and to provide a means of expression for the workers views on matters of society."

(*International Confederation of Free Trade Unions* in Du Toit, 1976:1)

4.2.2 Role of trade unions in the labour relationship:

The role of trade unions in the labour relationship is to protect workers or their members in "certain favourable situations" and to defend their interests in less favourable circumstances⁸ (Stagner in Du Toit, 1976:6).⁹ Specific trade union concerns include,

employer injustices, employee grievances and the need to secure greater workplace control (Sing & Bendix, 1993:61). The ability of trade unions to achieve these goals is, *inter alia*¹⁰, contingent on their rights within the workplace, namely:

- * The right to work;
- * The right to a freedom of association;
- * The right to collective bargaining;
- * The right to strike;
- * The right to protection; and
- * The right to training and development.

(Gerber, Nel & van Dyk, 1992:380; Reddy & Sing, 1988:86)

(Aaron, Najita & Stern, 1988:53; Flanders in Douwes Dekker, n.d.:46; Freeman, 1986:76; Sing & Bendix, 1993:61).

4.3 The State:

A definition and brief description of the role of the State in the labour relationship follows.

4.3.1 A definition of the State:

The State can be defined as:

A representative abstraction of all individuals in a society, which is commonly perceived as a system of government. (Adopted from Bendix, 1989:66)

4.3.2 Role of the State in the labour relationship:

The State fulfills a variety of functions which can be characterised by its role as both *master* and *servant* in the labour relationship (Gerber, Nel & van Dyk, 1992:376). These functions include the role of the State as legislator, conciliator, regulator, and advisor. In this context, the manner in which the Judiciary and Police influence the labour relationship is also a crucial consideration (Bendix, 1989:71).

4.3.2.1 The State as Legislator:

The States' functions as legislator include: selective sanctioning of employer and trade union rights and determining the nature of collective bargaining processes and dispute settlement procedures.¹¹ (Bendix, 1989:71)

4.3.2.2 The State as Conciliator:

The States' functions as Conciliator include: establishing conciliatory procedures for resolving disputes. Mechanisms which can be applied include arbitration, conciliation and mediation. (Bendix, 1989:72)

4.3.2.3 The State as Regulator:

The State's function as Regulator involves the application of various measures which influence the labour relationship. Examples include, the promulgation of emergency policies, such as "wage freezes" in the public sector, and the application of specific legal requirements for recognition agreements.¹² (Bendix, 1989:72)

4.3.2.4 The State as Advisor:

The State's function as Advisor involves monitoring or advising employers and trade

unions on specific matters. This function highlights its capacity to "influence the development of industrial relations in society". (Bendix, 1989:72)

4.3.2.5 The State and the Judiciary:

Although formally distinguished by separate responsibilities, it can be said that the judiciary "remains an instrument of the State". However, the recent need for a specialised knowledge of labour relations has led to the adoption of distinct labour relations jurisprudence which has underscored the level of judicial independence from State influence. (Bendix, 1989:72).

4.3.2.6 The State and the Police:

The police ostensibly play the role of public protector, especially in the case of labour disputes which threaten the property or life of civilians. However, police intervention in labour disputes is contentious. Therefore the State, which is responsible for maintaining public order, must decide on the nature and role of the police force in disciplining parties in the labour relationship (International Labour Organisation, 1989b:20).¹³ (Bendix, 1989:73)

5. Conducting the labour relationship:

The nature of the labour relations process is characterised by:

- * The purpose and objectives of a regulatory system;
- * The premises adopted by such an approach; and
- * The subsequent interpretation of *rights* in this regard.

5.1 Regulating the labour relationship:

The primary purpose of labour relations is to "confine the adversary's discretion in order to secure the actualisation of ones' own policy" (Dlugos, Dorow & Weiermair, 1988:112). However, despite the variety of *modus operandi* applied in labour relations systems, a key objective is to secure a stable and mature society. This goal involves the recognition of the inherency of conflict and the need to institutionalise, rather than suppress it (Douwes Dekker, 1990:24; Kahn-Freund, 1977:27; Pretorius in Steadman, 1993:44).¹⁴ According to Pretorius (in Steadman, 1993:44), a *mature society* can therefore be measured, in part, *by the degree to which its members take responsibility for the conflicts and disputes that inevitably exist within it*. To sum up, *labour relations* involves the following objectives:

- * To resolve conflict in a rational and methodical manner; and
 - * To localise the existing adversity of key parties.
- (Kahn-Freund, 1977:27)

These goals can be characterised by the following key labour relations premises.

5.2 Key premises for conducting the labour relationship:

Four key premises characterise the nature of labour relations, namely:

- * The flexibility of rules of conduct applied;
- * The prevailing climate of trust and understanding between parties;
- * The mutual interdependence of employers and trade unions by the distribution of powers; and
- * The protection of group interests and rights.

(Poppleton, 1985:15-18; Purcell in Douwes Dekker, n.d.:34)

5.2.1 Flexible rules of conduct:

Because of the dynamic nature of labour relations, the viability of applied rules of conduct are dependent on the capacity for legislation to change. Specific concerns in this regard include:

- * The application of restrictive or dogmatic legislation which can exacerbate existing tensions; and
- * The application of indistinct or indeterminant legislation (i.e. a lack of distinct rules) which can result in the adoption of alternative measures, such as processes of power, in resolving labour conflicts.¹⁵

(Bendix & Swart, 1982:2; Heneman & Schwab, 1978:272; International Labour Office, 1986:66; Kahn-Freund, 1977:21-50; Reese, 1983:51).

Therefore, the manner in which labour legislation supports or restrains social power is contingent on its flexibility and the distinction of rules applied. These regulations must also take into account the pragmatic realities of the relationship (Kahn-Freund, 1977:13). As Reese (1983:51) explains:

"Organisational reality is ever-changing, and labour legislation ultimately can do nothing but acknowledge these changes by continually amending the statutes."

5.2.2 Trust:

A crucial element of successful labour relations is the degree to which parties can trust one another within this process. It is suggested that *trust* is contingent on the extent to which parties participate in the regulation of the labour relationship (i.e. voluntary systems of labour relations) and the degree of "openness" enjoyed between such parties (Poppleton, 1985:19; Purcell in Douwes Dekker, n.d.:34). However, complete trust is

undermined by the inherent nature of conflict in the labour relationship (Douwes Dekker, n.d.:34).

5.2.3 Distribution of powers:

The distribution of powers between parties within a labour relationship influences the nature of ensuing practices. Sources of power differ among the parties. Trade union power is usually determined by the size of its membership or its constituency,¹⁶ while employer power, is derived from the accumulation and/or control of available human and material resources (Coetzee, 1985:143; Hernandez, 1983:3). It is proposed that an equitable distribution of powers is fundamental for ensuring a stable labour relations system (Flanagan, 1990:305).¹⁷

5.2.4 Protection of group interests:

The protection of group interests is fundamental to stable labour relations. In particular, this premise involves the protection of trade union civil liberties, namely:

- * Right of peaceful assembly;
- * Freedom of opinion;
- * Protection against arbitrary arrest;
- * Right to a fair trial by an independent and impartial court; Protection against inhuman treatment; and
- * Protection of trade union property based on "widely recognised principles of participation by workers' and employers' organisations in balanced economic and social development".

(International Labour Organisation, 1989b:3)

Subsequently, a lack of recognition for trade union interests can lead to a "loss of faith in trade unionism itself, to the detriment not only of the workers, but in the long run to *society as a whole*" (International Labour Organisation, 1989b:22). (International Labour Office, 1986:24)

In this context, *rights* play a key role in entrenching the above premises.

5.3 A description of *Rights*:

According to Cranston (in Brassey *et al*, 1987:124) three elements distinguish *rights*:

- * *Universality*;
- * *Paramountcy*; and
- * *Practicability*.

Each element sets particular conditions for establishing principle *rights* arguments. For example, with regard to the right to strike, the *Universality* argument states that a choice can be made between the right to strike as a right *in rem* (i.e. a universal right) or a right *in personam* (i.e. a local or citizen right). Therefore, those advocating a right to strike would adopt the view that this right is fundamentally a right *in rem* (i.e. a universal right). On the other hand, those opposing a right to strike would support the notion that this right is a right *in personam* (i.e. a local or citizen right). (Ben-Israel, 1988:29-30; Cranston in Brassey *et al*, 1987:124)¹⁸

6. Overview of Chapter Two:

This chapter described a variety of conceptual, theoretical and practical features of *labour relations*. In particular:

- * The concept and definition of *labour relations*;
- * A description of the main frames of reference, notably the Unitarist, Radicalist and Pluralist perspectives;
- * The constitution and role of parties (employers, trade unions and the State) and the nature of their rights in the workplace; and
- * The key premises for conducting the labour relationship.

For the purposes of this thesis, *labour relations* was described as an interactive framework for parties to regulate matters of mutual concern. Finally, it was noted that the Pluralist frame of reference was to be applied for this thesis.

CHAPTER THREE

A BACKGROUND TO LABOUR DISPUTES AND THEIR SETTLEMENT.

1. Introduction:

This chapter outlines a background to labour disputes and their settlement, notably:

- * The concepts of *conflict* and *inherent conflict*;
- * The causes of labour conflict;
- * The concept of *labour disputes*;
- * The processes of labour dispute resolution and settlement; and
- * The approaches to labour dispute settlement.

2. The concepts and a definition of *conflict* and *inherent conflict*:

Conflict can be described as "a clash between different group principles or interests" (Presidents Council Report, 1990:2).

A number of traits characterise conflict in the workplace, namely:

- * That it is perceived;
 - * That it follows a number of stages;
 - * That it involves opposition;
 - * That it includes a scarcity of resources; and
 - * That it provokes an obstruction to agreement
- (Fox in Fox, Schwella & Wissink, 1991:175).

Conflict can be either *functional* or *dysfunctional*. *Functional conflict* involves a variety of pressures which improve the organisational function, for example, more effective policy-making or planning, undoing "groupthink" tendencies and motivating individuals to be more innovative (Fox in Fox, Schwella & Wissink, 1991:174). On the other hand, *dysfunctional conflict* can be characterised by a breakdown in organisational services or outputs due, *inter alia*, to generic employment issues or bargaining imbalances (Fox in Fox, Schwella & Wissink, 1991:174; Fox in Wood, 1989:258).¹

For the purposes of this thesis, the following definition of *conflict* applies:

"A process within which an intentional attempt is made by party A to thwart party B by way of obstruction that will result in frustrating party B in attaining his objectives or furthering his interests"

(Robbins in Fox, Schwella & Wissink, 1991:175).

Inherent conflict can therefore be described as a *natural* or *inevitable phenomenon of society*, which in terms of labour relations, is the key dynamic between employers (or management) and trade unions (or labour). (Kahn-Freund, 1977:28; Pillay & Bendix, 1993:45)²

3. Causes of labour conflict:

A variety of factors can trigger labour conflict. In general, these factors can be ascribed to the inherent imbalances of "social demands, [the] employment relationship and the spirit and possibilities of the common law" (Kahn-Freund, 1977:12).

The causes of labour conflict can be categorised into the following contexts:

- * Environmental factors;
- * Behavioural factors; and
- * Structural factors.

3.1 Environmental factors:

Environmental factors can be distinguished by the political, social, economic, legal and organisational environments. Each of these environments is briefly described.

3.1.1 The political environment:

Politics involves the shaping of power, rule and authority (Wood, 1989:7). In the workplace, the political environment can influence the nature of the labour relationship by restricting certain party privileges or rights. Subsequently, political factors can trigger conflict in a number of ways. According to Hernandez (1983:11) such causes involve:

"Any measures adopted to prohibit, restrict or impair the ability of wage-earners to organise themselves for collective industrial action [in] an effort to control the power distribution of society."

Other political factors contributing to labour relations conflict include:

- * Trade union opposition to public policies;
- * The use of unfair rules and regulations;
- * The use of police or military intervention for settling labour disputes;
- * The application of excessive prohibitions by the State or employers against trade unions; and
- * Limited or non-existent democratic (human) rights.

(Hernandez, 1983:11; Wood, 1989:247)

3.1.2 The social environment:

Labour conflict can be caused by ineffective community structures (Ben-Israel, 1988:1; Hernandez, 1983:7; Wood, 1989:55). Subsequently, employees which are poorly integrated with the "wider society" may feel isolated and threatened by an "alien working environment" (Eldridge in Wood, 1989:55). Consequently, the need for "group cohesion" or a "consciousness of collective grievance" and the protection of self interests can result in labour conflict (Hernandez, 1983:7).

3.1.3 The economic environment:

Labour conflict can be caused by the nature or state of the economic environment at a point in time (Wood, 1989:58,247). For example, during a period of economic growth the focus of specific conflicts or disputes usually includes demands for higher wages³ and better working conditions (Hernandez, 1983:4-10). On the other hand, during a recessionary period concomitant labour hardships can trigger demands for job security and work-related matters (Ben-Israel, 1988:1)⁴. It is also suggested by Cronin that labour conflict can itself influence the "character and nature of the economic system" (in Wood, 1989:58).

3.1.4 The legislative environment:

A number of legislative factors can contribute to labour conflict in an organisation, namely:

- * The use of "punitive strike law";
- * The use of prejudiced and inflexible legislation;
- * The use of inappropriate or superfluous legislation;
- * The application of unfair judicial discretion;
- * The prohibition of key labour rights, such as the right to strike; and

- * The absence of acceptable rules of procedure.
(Bendix & Swart, 1982:8; Freeman, 1986:43,66-68; International Labour Organisation, 1989b:108; Hernandez, 1983:7; Lieberman, 1980:28; Morris, 1985:234)

3.1.5 The organisational environment:

A variety of organisational factors can contribute to labour conflict, namely:

- * Feelings of workplace alienation ;
- * Poor or unsatisfactory work conditions;
- * Concerns over job security (crisis of redundancy, technological change, and new skill requirements);
- * Dissatisfaction with existing management or administrative practices;
- * Failed or frustrated employee aspirations; and
- * Unrealistic organisational demands or expectations of the workforce.
(Blauner and McCord in Wood, 1989:56; Hernandez, 1983:7-13)

3.2 Behavioural factors:

Labour conflict can also be caused by a variety of behavioural factors. These include:

- * A fear of *change* in the workplace;
- * Group beliefs and the lack of confidence in key actors; and
- * Different expectations by held the parties with regard to the labour relationship.

These concerns will be briefly described.

3.2.1 Fear of change:

A fear of change in the workplace can result in the process of redefining principle "structures and customs of radical differentiation and control" into new paradigms (Du Plessis, 1990:63). Therefore, the loss of employer and trade union control and a general sense of insecurity with the future can be "accompanied by conflict, protest, uncertainty and even possibly violence" (Du Plessis, 1990:63). Findings by Terreberry (in Baker, 1973:178) and Warwick (1974:101) support this notion and suggest that an inverse relationship exists between unstable or unpredictable environments and the lack of potential for management change.⁵ Consequently, such an unstable environment can lead to labour conflict.

3.2.2 Group beliefs and a lack of confidence:

Group beliefs and a lack of confidence in certain actors in the labour relationship can also trigger conflict. Therefore, a key concern involves the desire to satisfy certain rudimentary or "non-negotiable" needs, namely: *acceptance, recognition, human dignity, identity, security and human development*. Other contributing factors include heightened emotions during party or individual interactions in the labour relationship and a lack of confidence in the negotiators' persuasive skills. (Burton in the Presidents Council Report, 1990:86; Hernandez, 1983:7; King, 1990:17)

3.2.3 Divergent expectations:

A divergence of expectations can lead to labour conflict. Farber & Bazerman (1989:99-118) cite three specific conditions which, in the case of bargaining, can lead to disagreement, namely:

- * The employer's inability to fulfil union demands;
- * The extremity of demands made by unions and the concomitant reluctance of employers to agree; and
- * Unfulfilled expectations held by both parties with regard to the potential outcome.⁶

Subsequently, conflict can be triggered by *uncertainty*, *misinformation* or a *miscalculation* of the bargaining process (Flanagan, 1990:311).

Other behavioural factors which can trigger labour conflict include:

- * Trade union challenges to the existing employer *status quo*;
 - * Intra-union competition (especially during periods of rapid unionisation); and
 - * The desire for trade union recognition.
- (Ben-Israel, 1988:1; Bendix, 1989:217; Cronin in Wood, 1989:58; Flanders in Bendix and Swart, 1982:8; Hernandez.1983:4-7).

3.3 Structural factors:

A poor labour relations climate can be precipitated by inappropriate, inadequate or poorly regulated policies and procedures (Boshoff & Bendix, 1993:37; International Labour Organisation, 1989b:120; Wissink in Fox, Schwella & Wissink, 1991:198).

Subsequently, conflict can be triggered by specific structural inadequacies or concerns. These include, a denial of certain fundamental labour rights, the use of an inappropriate bargaining level⁷ and the use of poor or ineffective communications structures.⁸ (Hernandez, 1983:7; Hyman, 1975:166; Sing & Bendix, 1993:67).

4. The concept of labour disputes:

Because of their mercurial nature, labour disputes have resulted in a wide variety of meanings, such as, *strife*, *discord*, *controversy* or *disunity* (Presidents Council Report, 1990:2). Therefore, the notion of *labour dispute* varies internationally. In the context of *labour relations*, *labour disputes* broadly typify *forms of disagreement between employers and trade unions*. These forms include matters of "common interest, any work-related factor affecting their relationship or any processes and structures established to maintain such relationships" (Bendix, 1992:227; Treu, T. *et al.*, 1987:27). Labour disputes are furthermore distinguished by *disputes of right* and *disputes of interest*.

4.1 The concept of disputes of right:

Disputes of right directly violate or challenge existing *rights*. *Rights* broadly reflect agreed or legislated standards of practice which are non-negotiable. Consequently, disputes in this category must be interpreted according to existing legal provisions or clauses which regulate employment. *Rights* may however also be interpreted according to customary workplace practices. (Bendix, 1989:202; Douwes Dekker, 1990:294; Pankert, 1980:723)

The manner in which *disputes of right* are resolved or settled is described further on.

4.2 The concept of disputes of interest:

Disputes of interest concern issues where no definitive standards or legal measures are applied. They normally arise during the course of collective bargaining or negotiations. The outcome however, can result in the adoption of new rights or standards which if challenged, subsequently become *disputes of right*. (Bendix, 1989:203; Douwes Dekker, 1990:294; Pankert, 1980:723) The manner in which *disputes of interest* are resolved or settled is described further on.

5. Processes of labour dispute resolution and settlement.

The primary objective of labour relations is to regulate "inevitable and necessary conflicts" by means of "reasonably predictable procedures" (Kahn-Freund, 1977:27; Hyman in Wood, 1989:263). In terms of this goal, a variety of mechanisms can be adopted by disputants for resolving or settling labour disputes in the workplace (Farber & Bazerman, 1989:103; Steadman, 1993:43). These can be distinguished by three broad processes, namely:

- * Power driven processes;
- * Processes of right; and
- * Processes of interest.

5.1 Power driven processes:

Power driven processes involve those measures adopted by parties in a conflict situation or labour dispute which are characterised by coercive confrontation or cajolery.

Examples of these processes include *industrial action*, *lock-outs* and *litigation*.

Subsequently, their resolution usually involves accommodation or compromise.

(Steadman, 1993:42; Wissink in Fox, Schwella & Wissink, 1991:191-192)

A brief description of the above processes follows.

5.1.1 Industrial action:

The following aspects of industrial action will be described:

- * The concept and a definition of *industrial action*;
- * Categories of industrial action;
- * Types of industrial action;

- * Stages of industrial action; and
- * Factors influencing the adoption of industrial action.

5.1.1.1 The concept and a definition of *industrial action*:

A variety of definitions of *industrial action* are applied (Wood, 1989:6). However, *industrial action* can be broadly described as the manifestation of unresolved conflict (Pillay & Bendix, 1993:45). A common characteristic of all the above definitions is the breakdown of negotiations between employers and the trade unions.⁹ Subsequently, *industrial action* can be distinguished by three key features, namely:

- * A cessation of work or refusal to obey management;
 - * A commencement of concerted and concurrent collective action; and
 - * A notice of a demand.
- (Bendix, 1989:213; Brassey *et al*, 1987:126; Cameron, Cheadle & Thompson, 1989:72; Hernandez, 1983:3; Miles, 1988:2; Rycroft & Jordaan, 1990:215-220).

For the purposes of this thesis, the following definition of industrial action applies:

A collective action where workers withdraw from the labour process as a means of gaining a particular demand or demands. (Adapted from Hyman in Wood, 1989:6)

5.1.1.2 Features of industrial action:

The following forms of industrial action will be described:

- * Categories of industrial action;

- * Levels of industrial action; and
- * Specific types of industrial action.

5.1.1.2.1 Categories of industrial action:

Industrial action can be categorised into *trial of strength strikes*¹⁰ and *demonstration stoppages*. *Trial of strength strikes* are characterised by prolonged disputes which transpire when all other means of resolving an issue have failed to bring about a satisfactory settlement to the dispute. They are normally embarked upon as a last resort. On the other hand, *demonstration stoppages* are usually adopted when trade unions believe that an inadequate or unsatisfactory outcome to their demands is imminent. They are usually adopted for a short period of time to *persuade* or redress imbalances in the negotiation process. (Bendix, 1989:217; Hyman in Wood, 1989:7)

Strikes can also be characterised by their spontaneity. Spontaneous or *wildcat strikes* generally occur without prior warning. This category of industrial action is usually *illegal* or *unconstitutional* and often takes place once a trade unions "existence has become largely irrelevant" to a particular conflict¹¹ (Turner *et al* in Hyman, 1975:156). (Bendix, 1989:218; Hernandez, 1983:4; Rycroft & Jordaan, 1990:220)

Strikes can also be characterised by their sympathetic nature.

Sympathy strikes entail a show of support by those trade unions not directly involved in a labour dispute with employers. Therefore, this process involves the application of indirect pressure for the demands of another trade union in direct dispute with employers. (Bendix, 1989:217-218; Hernandez, 1983:4; Rycroft & Jordaan, 1990:220)

5.1.1.2.2 Levels of industrial action:

Industrial action can occur at all the levels of industry. These range from the *plant-level*

or *organisational* strikes to *industry*, *inter-industry* and even *national* strikes. (Bendix, 1989:218; Hernandez, 1983:4)

The nature of disputes at each level is also contentious. For example, Bendix (1989:218) suggests that industrial action at the higher levels of industry are usually characterised by political matters or issues. On the other hand, Hernandez (1983:4) counters that at all levels, the principle goal of industrial action involves the improvement of economic matters for the workforce.

5.1.1.2.3 Types of industrial action:

A number of specific types of industrial action can be adopted. These include: *Overtime bans*, *work-stoppages*, *work-to-rule*, *go-slows*, *sit-ins*, *picketing/boycotts* and other approaches. Each of these types is briefly described.

5.1.1.2.3.1 Overtime bans:

Overtime-bans involve the prohibition of the workforce by trade unions to work after-hours in an organisation. This entails a curtailment of contractual or voluntary labour hours, during or after formal working hours. *Overtime-bans* are usually adopted in organisations which are dependent on the completion or continuation of the work process "after-hours". (Bendix, 1989:223; Rycroft & Jordaan, 1990:216).¹²

5.1.1.2.3.2 Work-stoppages:

Work-stoppages involve a refusal by trade unions to work for no reason (i.e. they do not set an industrial demand). This form of industrial action is often spontaneous and can be invoked without the permission of a trade union (Rycroft & Jordaan, 1990:218).

5.1.1.2.3.3 Work-to-rule:

Work-to-rule involve a continuation of work within the organisation but strictly according to the letter of the employment contract. This form of industrial action can result in a drop of production or service standards while pay incomes are continued. Furthermore, the *work-to-rule* is particularly effective when adopted by skilled employees. (Bendix, 1989:224; Rycroft & Jordaan, 1990:219).

5.1.1.2.3.4 Go-slows:

Go-slows involve a similar process as *work-to-rule* but differ in that they specifically limit outputs or the standard of service provided during working hours. (Bendix, 1989:223; Rycroft & Jordaan, 1990:219).

5.1.1.2.3.5 Sit-ins:

Sit-ins involve the occupation of the workplace by trade unions which refuse to work and seek a halt in production or service. The goal of this approach is to deny employers access to production in order to promote trade union demands (Rycroft & Jordaan, 1990:220).

5.1.1.2.3.6 Picketing/Boycotts:

Picketing/boycotts or *stayaways* involve "large-scale and serious actions" which disrupt the work cycle. Characteristic measures adopted include the prevention of "scab labour" from continuing work, persuading fellow employees to join the cause, declaring the dispute publicly and preventing clientele from the benefits of the service or product. (Bendix, 1989:224; Rycroft & Jordaan, 1990:221; Wood, 1989:6).

5.1.1.2.3.7 Other:

Other types of industrial action can include, absenteeism and industrial sabotage (Wood, 1989:8).

5.1.1.2.4 Factors influencing the use or choice of industrial action:

Industrial action can be triggered by *consensus* or *conduct*. *Consensus mobilisation* occurs when industrial action is approved by a trade unions' membership (i.e. a passive approach). *Action mobilisation* is characterised by the use of militant behaviour in order to stimulate general support for industrial action (i.e. an active approach). (King, 1990:19) However, the adoption of these power processes are influenced by a number of conditions, namely:

- * The potential cost or punishment for such action;
 - * The possible reward or discipline for participation;
 - * The usefulness of such an approach in fulfilling specific goals;
 - * The overall advantages and disadvantages of each type of industrial action; and
 - * The potential support for such action by the membership of a trade union.
- (King, 1990:19-20)

5.1.1.2.5 Phases and the development of industrial action:

In terms of the above, the industrial action process can be summed up by the following phases and developments:

- * The prevalence of *conditioning factors* or circumstances in the workplace, for example, ineffective collective bargaining structures;

- * The generation of *specific triggers* or causes;¹³
- * The occurrence of *facilitators* or *inhibitors* in determining the course of events to follow. Examples include, existing trade union and management expertise as well party strategies;
- * The *measures* and *approach* adopted for settling industrial action; and
- * The determination of either a *substantive outcome* (i.e. real gains such as a wage increases) or *procedural outcomes* (i.e. procedures adopted for future Industrial Relations practices).

(Hernández, 1983:1-15)

5.1.2 Lock-outs:

Employers have recourse to a lock-out in the event of industrial action. The main purpose of a lock-out is to prevent striking workers from entering the workplace premises. The reason given for this action is usually ascribed to the employer's concern with regard to the potential damage of industrial action in the workplace.¹⁴ (Ben-Israel, 1988:2; Douwes Dekker, 1990:291; Rycroft & Jordaan, 1990:221)

5.1.3 Litigation:

Litigation is a process whereby disputes are settled in a court of law or other quasi-legal institutions, such as Industrial Courts. It is particularly useful in the case of *disputes of right* which require formal interpretation. (Independent Mediation Society of South Africa, 1985:1; Wissink in Fox, Schwella & Wissink, 1991:200)

5.2 Processes of right:

Processes of right are designed to settle disputes by means of an "independent standard of right or fairness which judges what the parties want" (Steadman, 1993:42). *Processes of*

right are characterised by the use of the *arbitration* mechanism.

5.2.1 Arbitration:

Arbitration can be described as an "amorphous form of third-party intervention" which involves a binding settlement between disputing parties. (Bendix, 1989:211; Bloch, 1989:35; Independent Mediation Society of South Africa, 1985:3; Swart, 1988:121; Thompson, 1992:504)

The following aspects of arbitration are briefly described:

- * The purpose of arbitration;
- * The approaches to arbitration; and
- * The application of arbitration.

5.2.1.1 Purpose of arbitration:

The purpose of arbitration is to encourage parties to settle disputes by negotiation. Failing this, a narrowing of demands by both parties is sought as far as possible before its application. A key element of arbitration is the uncertainty of the award outcome by the arbitrator. This serves as a key impetus for negotiations or a narrowing down of demands to an "acceptable level of loss" by either party. (Bloch, 1989:36; Farber & Katz in Farber & Bazerman, 1989:103; Freeman, 1986:70; Weiler, 1980:229).

5.2.1.2 Approaches to arbitration:

Common forms of arbitration involve the use of *conventional arbitration*, *last offer* and *pendulum arbitration*.

5.2.1.2.1 Conventional Arbitration:

Conventional arbitration is characterised by an equitable split in award by the arbitrator. Both parties in dispute can therefore expect a number of rewards and costs for their demands. (Bendix, 1989:211; Farber & Bazerman, 1989:100).

5.2.1.2.2 Last Offer and Pendulum Arbitration:

Last offer, best offer or last best offer arbitration is characterised by the selection of one or the other parties' final offer (or last offer) by the arbitrator. *Pendulum, either-or or one-or-the-other* arbitration however, involves the selection of either parties final offers on an issue-by-issue basis. (Bendix, 1989:211; Farber & Bazerman, 1989:100; Independent Mediation Society of South Africa, 1985:3; Lewin, D. *et al.*, 1988:339-43; Weiler, 1980:232)

5.2.1.3 Applying arbitration:

Although arbitration is commonly applied to settle *disputes of right*, it can also be applied to *disputes of interest*. The latter approach is characterised by the use of *voluntary arbitration* where both parties apply for this mechanism and select an arbitrator by mutual consent. Arbitration is usually the final step in dispute settlement. In some services (such as essential services) it also displaces certain key labour rights, such as the right to strike. (Alfred, 1984:66; Independent Mediation Society of South Africa, 1985:5; Kochan in Bendix, 1989:211; Subbarao, 1988:122)

5.3 Processes of interest:

Processes of interest are designed to settle disputes by means of negotiation. This process involves a consideration of the "needs, desires, concerns, and fears which lie behind what

the parties say they want" (Steadman, 1993:42). *Processes of interest* are characterised by the use of *collective bargaining, mediation and conciliation*.

5.3.1 Collective bargaining:

The following aspects of collective bargaining will be described:

- * The concept and a definition of collective bargaining;
- * The purpose of collective bargaining; and
- * The scope and content of collective bargaining.

5.3.1.1 The concept and a definition of collective bargaining:

Collective bargaining involves an engagement between two or more parties in the labour relationship to find agreement or accommodation. This process involves *identifying or analyzing both differing and shared needs and interests and optimising common ground*¹⁵ with regard such matters of mutual concern. Such parties are represented by employer and trade union interests. (Alfred, 1984:8; Craythorn, 1990:278; Fox in Fox, Schwella & Wissink, 1991:178; Horwitz, 1991a:76; Public Services International in Sing & Bendix, 1993:63; Wiehahn, 1988:71)¹⁶.

Collective bargaining is described as the *keystone* of labour relations. However no universal definition of collective bargaining is applied. The lack of a uniform definition can be attributed to the number of contexts in which bargaining can take place¹⁷.

For the purposes of this thesis, the following self-applied definition of *collective bargaining* applies:

A process of interaction between parties in the labour relationship seeking agreement through negotiation on substantive and procedural matters pertaining to their employ.

5.3.1.2 The purpose of collective bargaining:

The purpose of collective bargaining is to settle employment disputes in a peaceful and predictable manner¹⁸.

This process involves:

- * Securing employment justice;
 - * Ensuring equitable participation by all; and
 - * Providing the means for a fair regulation of industrial disputes.
- (Cameron, Cheadle & Thompson, 1989:69; Trollip, 1990b:22; Van Coller, 1986:8)

These objectives are applied within the collective bargaining process.

5.3.1.3 The scope and content of collective bargaining:

The scope and content of collective bargaining can be described in the following manner:

- * Steps in the collective bargaining process;
- * Forms of collective bargaining; and
- * The collective bargaining structure.

5.3.1.3.1 Steps in the collective bargaining process:

The collective bargaining process can be characterised by the following steps:

- * *Mandate*: Parties seek a mandate from their members in order to clarify key issues for bargaining;¹⁹
- * *Strategising*: A process of "strategising" follows, whereby demands and counterproposals are exchanged between the participant trade unions and employers. This step is used for assessing the likelihood of opposing expectations and for securing the best possible gains;
- * *Bartering*: Bartering involves a "whittling-down" of original demands as submitted by both parties before consensus can be achieved; and
- * *Consensus*: Finally, where the "costs of disagreement" outweigh the "costs of agreement" consensus can be reached and bargaining completed.

(Chamberlain and Kuhn in Lewin, D. *et al.*, 1988:194; Douwes Dekker, n.d.:41; Horwitz, 1991a:66; Lewin, D. *et al.*, 1988:194; Trollip, 1990a:35)

5.3.1.3.2 Forms of collective bargaining:

A wide variety of collective bargaining forms exist. As Reese (1983:32) comments:

"The right to collective bargaining covers a whole spectrum of systems and styles, reflecting to a large extent the cultural values prevailing in a particular industrialised society."

In general however, the collective bargaining process can be distinguished by the following formats:

- * *Dynamic* and *Static* bargaining; and
- * *Distributive* and *Integrative* bargaining.

5.3.1.3.2.1 *Dynamic and Static bargaining:*

Collective bargaining can be either *dynamic* or *static*. The *dynamic* approach involves a variety of formal interventionary bilateral mechanisms, such as Industrial Councils and Conciliation Boards, for settling disputes. The *static* approach involves informal voluntary mechanisms for finding an agreement between disputing parties. Both approaches can adopt either a *distributive* or *integrative* bargaining style. (Kahn Freund, 1977:52; Lewin, D. *et al.*, 1988:193).

5.3.1.3.2.1 *Distributive and Integrative bargaining:*

Distributive or *win-loose* bargaining apportions awards between disputing parties.

Distributive bargaining is characterised by the use of adversarial tactics, notably *threats* and *bluffs*, in order for parties to ensure a better outcome to their demands.²⁰ This approach is usually adopted where *disputes of interest* occur, for example economic issues such as wages. (Klinger, 1980:342; Lewin, D. *et al.*, 1988:194)

Integrative or *win-win* bargaining involves a fair "split" of awards between parties.

Integrative bargaining is characterised by an open and honest manner which parties adopt in an effort to find a settlement. This approach can be applied in *disputes of right*, such as contractual and other non-economic issues. (Klinger, 1980:342; Lewin, D. *et al.*, 1988:194)

In practice, a mixture of both the above approaches is often adopted. This trend can be ascribed to the *integrative* nature of the employment relationship and the *distributive* nature of group interests. (Walton-McKersie in Lewin, D. *et al.*, 1988:193).

5.3.1.3.3 The collective bargaining structure:

The collective bargaining structure adopted is contingent upon "the interests, preferences, and characteristics of labour and management". Notably, these structural features are influenced by "the economic, legal, and political characteristics of the immediate environment". (Lewin, D. *et al.*, 1988:124)

To sum up, three key features distinguish collective bargaining structures, namely:

- * Bargaining representation and unit determination;
- * Bargaining scope; and
- * Bargaining levels.

5.3.1.3.3.1 Bargaining representation and unit determination:

The size or representation of parties within the bargaining process can fundamentally affect the balance of bargaining power, the norm being: the larger or more representative the party, the greater its influence in the bargaining process²¹(Lewin, D. *et al.*, 1988:125). A *bargaining unit* can be defined as:

"A group recognised as appropriate for representation by an employee organisation for the purposes of collective and/or meet-and-confer discussions."

(Freeman, 1986:76)

Key factors which influence or qualify the nature and composition of a *bargaining unit* include:

- * The similarity of bargaining duties expected by negotiators;
- * The diversity of bargaining topics;

- * The potential number of bargaining representations; and
- * The extent to which administrative and managerial functions are centralised.

(Lewin, D. *et al.*, 1988:125)

5.3.1.3.3.2 Bargaining scope:

The bargaining scope is characterised by a variety of social and economic demands. Common examples include conditions of service, wages, trade union recognition and the bargaining procedures themselves. The selection of bargaining topics is however dependent on the relevance of such concerns to participants and the flexibility with which they can be bargained for. (Aaron, Najita & Stern, 1988:211; Lewin, D. *et al.*, 1988:511; Lieberman, 1980:27; Pankert, 1980:733)

5.3.1.3.3.3 Bargaining levels:

Collective bargaining can occur at either the *organisational (local)*, *sectoral*, *industry* or even *inter-industry (central)* level (Patel, 1990:50). Determining the appropriate level for bargaining to occur is however complex. This dilemma is illustrated by the following list of possible advantages and disadvantages of a *central* bargaining level:

Advantages of centralised bargaining:

- * The efficient use of negotiators;
- * The setting of both minimum and equitable standards for whole industries;
- * The provision of clear, uniform and congruous job rates; and
- * The promotion of "economies of scale" or cost-effectiveness, thereby allowing individual organisations more time to concentrate on other key

responsibilities.

(Knowles, 1988:227; Patel, 1990:50-1)

Disadvantages of centralised bargaining:

- * The lack of organisational autonomy;
- * The potential lack of fair representation by some trade unions at the central level due to their limited membership number; and
- * The lack of consideration given to minority views.

(Knowles, 1988:227; Patel, 1990:50-1)

Subsequently, as noted above, the selection of a particular level for collective bargaining is dependent on the predominant interests and needs of parties at the time of the dispute (Bendix & Swart, 1982:7).

5.3.2 Mediation:

Mediation encompasses "a wide variety of dispute resolution behaviours" (Lewin, D. *et al.*, 1988:336). These behaviours will be described in the following manner:

- * Purpose of mediation;
- * Approaches to mediation; and
- * Applying mediation.

5.3.2.1 Purpose of mediation:

The purpose of mediation is to facilitate negotiation with parties which cannot reconcile their differences without outside intervention²²(Bendix, 1989:208; Independent Mediation Society of South Africa, 1985:1).

5.3.2.2 Approaches to mediation:

Three possible approaches can be adopted in the mediation process, namely:

- * *Reflexive strategies;*
- * *Non-directive strategies; and*
- * *Directive strategies.*

5.3.2.2.1 Reflexive strategies:

Reflexive strategies can be applied in circumstances where an agenda or format for dispute resolution has already been established by the disputants. Subsequently, the mediators²³ role in settling a dispute becomes symbolic with little or no intervention during the process. (Lewin, D. *et al.*, 1988:359)

5.3.2.2.2 Non-directive strategies:

Non-directive strategies are similar to the above approach but differ in that some mediatory guidance may be sought in formulating resolutions (Lewin, D. *et al.*, 1988:359).

5.3.2.2.3 Directive strategies:

Directive strategies, on the other hand, are distinguished by the commitment of the mediator to settle the process in an active manner. This strategy is usually adopted in the case of obstinacy or a loss of initiative during prior engagements which threaten the possibility of a final settlement. (Lewin, D. *et al.*, 1988:359)

5.3.2.3 Applying mediation:

Mediation is suitable for both disputes of right and disputes of interest (Alfred, 1984:66; Bendix, 1989:211; Douwes Dekker,n.d.:71).

Mediation, as noted above, is facilitated by a *third party*. This party can embody either an individual or agency appointed by the government, privately, or by the parties themselves. A key quality of the mediator is that such an individual or group are neutral to the debate.²⁴ (Bendix, 1989:208; Lewin, D. *et al.*, 1988:352; Wissink in Fox, Schwella & Wissink, 1991:199). Subsequently, the mediators role involves:

- * Identifying and confronting issues of importance;
- * Providing favourable circumstances and conditions for conflict resolution;
- * Removing barriers to effective communication;
- * Re-establishing the values for effective negotiation such as persuasion rather than coercion, mutual respect and openness; and
- * Finding workable solutions to both parties, and making them acceptable to all those involved.

(Wissink in Fox, Schwella & Wissink, 1991:199-200).

Mediation can be applied at any stage of the bargaining process, and followed or preceded by other dispute settlement mechanisms (Independent Mediation Society of South Africa, 1985:4). The approach is usually "relatively informal and unstructured, reflecting the personal style of the mediator, the preferences of the union and employer representatives, and the intensity of the dispute" (Lewin, D. *et al.*, 1988:334). In spite of its somewhat nebulous nature, mediation is characterised by three procedural phases:

- * An introduction and establishment of a mediators' credibility;²⁵
 - * Active mediatory input and counsel on matters pertaining to the dispute;²⁶
- and

- * Attaining a settlement or acknowledging the need for other mechanisms to resolve the dispute.

(Kochan in Bendix, 1989:207-10).

5.3.3 Conciliation:

Conciliation can be described as a process of facilitating disputes in a non-substantive manner by a third party or facilitator. Conciliation will be described in the following manner:

- * Purpose of conciliation;
- * Approaches to conciliation; and
- * Applying conciliation.

5.3.3.1 Purpose of conciliation:

The purpose of conciliation is to establish a bargaining forum where parties in dispute can be guided or controlled by the facilitator who is neutral to the debate (Bendix, 1989:207).

5.3.3.2 Approaches to conciliation:

The role of the conciliator is restricted to the process of *refereeing* a dispute, while avoiding any part in the substantive matters being discussed or negotiated by the disputants (Bendix, 1989:207).

5.3.3.3 Applying conciliation:

Conciliation is suitable for all forms of dispute, but especially for disputes of interest. Conciliation can be voluntarily adopted by parties in dispute or statutorily imposed by

the State. This mechanism is usually applied when all other means of negotiation have failed. This involves the establishment of a negotiating forum where disputing parties confront each other. If a stalemate or a breakdown in the process occurs then a "cooling off" period is allowed. This step ensures the maximum possible opportunity for resolving disputes by avoiding "heat of the moment events". (Bendix, 1989:207; Independent Mediation Society of South Africa, 1985:2)

5.4 Other dispute resolution and settlement mechanisms:

Several alternative mechanisms or combinations of the above can also be applied for settling disputes. Two primary mechanisms which will be described briefly include: *Fact-finding* and *Mediation-Arbitration*.

5.4.1 Fact-finding:

Fact-finding involves "the systematic collection of facts" by parties for disputants in order to present such data to a third party facilitator. A key characteristic of this process is the facilitators task of providing a non-binding decision. (Lewin, D. *et al.*, 1987:337-8; Wissink in Fox, Schwella & Wissink, 1991:200)

5.4.2 Mediation-Arbitration:

Mediation-Arbitration, as the name suggests, is a mixture of both these mechanisms. The process involves the establishment of a voluntary forum for negotiations, where the grounds for possible agreement are mediated and finally arbitrated. (Independent Mediation Society of South Africa, 1985:3)

6. Approaches to labour dispute settlement:

A number of approaches can be applied for resolving labour conflict. These are listed

below:

- * *Avoidance*: Staying out of potential conflict situations or avoiding topics which could generate conflict;
- * *Cajolery*: Or forms of "persuasion", whereby a party tactically approaches the urgency of an issue by focusing on the opposing parties "psyche";
- * *Smoothing*: One side or party adopts an attitude which reduces the perceived gravity of the conflict situation;
- * *Accommodation*: Reaching an agreement in which both parties to the dispute accommodate the demands of the opposing party;
- * *Compromise*: Where both parties shift their demands in order to reach satisfactory arrangements in which both have felt that "gains" have been made;
- * *Consensus*: Similar to *compromise* but with both parties focusing on an exchange of benefits; and
- * *Bargaining*: Involves a setting out of minimum demands which must be complied with in order to achieve a satisfactory outcome.

(Blake & Mouton in Fox, Schwella & Wissink, 1991:191-192; Dlugos, Dorow & Weiermair, 1988:112, Steadman, 1993:41).

6.1 Selecting a suitable mechanism for dispute settlement:

To sum up, the choice of an appropriate mechanism for dispute settlement depends on the interests of the disputing parties and applied statutory limitations (Dlugos, Dorow & Weiermair, 1988:112). However, whatever form or mechanisms are adopted in this regard, one of three possible outcomes can be expected:

- * That both parties reach agreement by negotiation;
 - * That one party's views prevail; or
 - * That a third party intervenes and sets a binding decision.
- (Weiler, 1980:223-4).

6.2 Institutional structures for dispute settlement:

A variety of institutional structures are applied for settling labour disputes. Three key structures will be briefly described, namely:

- * Labour Courts;
- * Industrial Councils; and
- * Advisory Groups or Boards.

6.2.1 Labour Courts:

Labour Courts are specialised institutions whose primary purpose is to "interpret and enforce aspects of labour law" within a particular industrial society (McCarthy, 1990:98).

However, criticisms of this process include:

- * The judges' limited knowledge of shopfloor issues, especially in terms of the *informal network of shared understandings and norms*; and
- * The potential for the Court to interfere in the substance of any agreements

made, thereby undermining the viability of long-term arrangements.
(McCarthy, 1990:99; Trollip, 1990a:39).

These drawbacks can however be alleviated by: the use of specialised expertise, the adoption of a flexible approach to dispute settlement and the encouragement of informal processes before its application (McCarthy, 1990:98-9).

6.2.2 Industrial Councils:

Industrial Councils are formal institutions which regulate conditions of employment and wages, and settle disputes. They comprise trade union and employer representatives and, in some cases, a third party which facilitates or adjudicates on matters concerning these member organisations. (Bendix, 1989:463-4; Horwitz, 1991b:6-7)²⁷

6.2.3 Advisory Groups or Boards:

A variety of independent or State-owned Groups or Boards are available for facilitating the dispute settlement process. These structures usually offer mediatory or conciliatory services. In some cases, on the request of disputing parties, Advisory Groups or Boards can apply adjudicative powers for settling a labour dispute. (Independent Mediation Society of South Africa, 1985:2-3)

6.3 Dispute resolution and settlement priorities:

The primary objective of a dispute settlement system is to ensure the longevity of agreements on substantive or procedural matters (Douwes Dekker, n.d.:62). However the approach or mechanism applied is contingent on numerous endemic conditions within present industrial society. Subsequently, a variety of approaches are applied²⁸ (True *et al*, 1987:29). To sum up, the following factors contribute to the form of dispute.

settlement adopted within a labour relations system:

1. The predisposition of parties to certain mechanisms or structures for resolving disputes;
2. The causes (or nature) and frequency of labour disputes;
3. The critically assessment of existing practices; and
3. The key measures applied for a system design (usually with an emphasis on negotiations).

(Steadman, 1993:43-4)

7. Overview:

This chapter outlined a background to labour disputes and their settlement, notably:

- * The concepts and a definition of *conflict* and *inherent conflict*;
- * The environmental, behavioural and structural causes of labour conflict;
- * The concept of *labour disputes*, notably *disputes of right* and *disputes of interest*;
- * The processes of labour dispute resolution and settlement, namely power driven processes, processes of right and processes of interest; and
- * The approaches to labour dispute settlement involving the selection of suitable mechanisms, institutional structures and priorities.

CHAPTER FOUR

LABOUR RELATIONS IN THE PUBLIC SECTOR.

1. Introduction:

This Chapter outlines a background to international labour relations practice in the public sector, notably:

- * The concepts and definition of *Public Administration* and *Public Management*;
- * The composition, purpose, characteristics and environment of the public sector, and in this context, the *Public Personnel Management* function;
- * The characteristics of labour relations in the public sector and key *models*;
- * The characteristics and role of parties to the labour relationship; and
- * The issue of *rights* in the labour relationship.

2. Key nomenclature:

The following terms are described and defined:

- * *Public Administration*; and
- * *Public Management*.

2.1 The concept and a definition of *Public Administration*:

The term *Public Administration* can be disaggregated into *public* and *administration*.

2.1.1 The term *Public*:

Public loosely refers to *everybody, everybody* but us or *people in general as compared to our group* (Dunsire, 1975:166). The term therefore, broadly refers to a community or the populace of a State.

2.1.2 The term *Administration*:

Administration is defined in a variety of ways (Hanekom, Rowland & Bain, 1985:12; Harris, 1990:3). These definitions can be broadly distinguished by the context within which they are applied, namely:

- * The constitutional law view;
- * The institutional view;
- * The business economic view;
- * The implementation view;
- * The comprehensive view;
- * The conventional view;
- * The management view; and
- * The generic view.

(Hanekom, Rowland & Bain, 1985:12).

In South Africa, a generic view of *administration* has traditionally been adopted (Cloete, 1986:1). However, in the last decade a shift towards the management view has been noted. This trend is discussed further on. The generic view describes *administration* as:

The process of directing and servicing an organisation by means of policy-making, organising, financing, staffing, work procedures and controlling.

(Adapted from Cloete, 1986:1; Dunsire, 1975:1; Morrow, 1980:2).¹

2.1.3 The term *Public Administration*:

As with the above terms, a plethora of definitions of *Public Administration* are applied. According to Waldo (in Nigro & Nigro, 1980:3), this is because "a serious definition of the term inevitably contains several abstract words or phrases which in the process become fogged and lost". The lack of a universal definition can also be ascribed to historical developments in terms of its paradigmatic status.² However, *Public Administration* can be characterised by six broad features, namely:

- * It is a cooperative group effort in a public setting;
 - * It covers all three branches of government, i.e. the executive, judicial and legislative functions;
 - * It plays an important role in public policy formulation and is therefore part of the political process;³
 - * It differs in significant ways from private administration;
 - * It is closely associated with private groups and individuals in providing community society.
 - * It involves "people, organisations, society, and the world environment"
- (Jun, 1986:30; Nigro & Nigro, 1980:14)

2.1.4 A definition of *Public Administration*:

Public administration can therefore be defined as:

The provision of services by government organisations to the public by means of policy-making, legislative, judicial, service, supervisory, inspectorial, representational, transaction-policy processing and production functions sponsored by the State.

(Adapted from Garret, 1972:9; Parker & Subramaniam in Dunsire, 1975:166-175).⁴

However, for the purposes of this thesis, the concept of *public management* applies.

2.2 The concept and a definition of *Public Management*:

The following aspects of *Public Management* will be examined:

- * The emergence of the *Public Management view* in the public sector;
- * The key characteristics of *Public Management*; and
- * A definition of *Public Management*.

2.2.1 Emergence of the *Public Management view*:

The traditional mechanistic or generic model of public administration is distinguished by hierarchically set lines of command and the allocation of specific functional duties to personnel (Brynard, 1992:4). This view is further characterised by the adoption of an incremental policy approach to organisational functioning. However, as noted above, the *management view* in *Public Administration* has emerged in stature as a public sector approach to administration.⁵ This can be attributed to a variety of factors, notably the disadvantages of the traditional *generic view* as applied by many public sector organisations, namely:

- * Inadequate performance measures;

- * An absence of incentives;
- * Poor or little competition;
- * Limited management autonomy; and
- * An overall decline in the status of public employment.

(Boston and Mascarenhas in Brynard, 1992:3; Treu, T. *et al.*, 1987:4).

2.2.2 Characteristics of *Public Management*:

Public management is characterised by a businesslike approach⁶ (Brynard, 1992:3). The key objective of this approach is to improve organisational performance. *Public Management* can therefore be described as a dynamic form of *market-liberalism* which involves the deregulation of services (i.e. decentralisation of State authority) and the transposition of selected business principles to government administration (Boston in Brynard, 1992:3-4; Denhart, 1984:43). Examples of these principles include:

- * Expanding the awareness of cost;
- * Promoting efficiency through responsibility (i.e. accountability) in the allocation of resources; and
- * Increasing productivity by merit and performance pay fixtures.

(Rayner in Brynard, 1992:3)

2.2.3 A definition of *Public Management*:

As with other related nomenclature, no universal definition of *Public Management* is applied (Allison in Golembiewski & Gibson, 1983:3; Denhart, 1984:51-52; Fox, Schwella & Wissink, 1991:2-4). However, Allison concludes that *Public Management* is essentially "a mixture of reflection on personal experience and speculation" (in Golembiewski & Gibson, 1983:3).

For the purposes of this thesis, the following definition of *Public Management* applies:

"The organisation and direction of resources to achieve a desired result."

(Allison in Golembiewski & Gibson, 1983:3).

3. The public sector:

The following features of the public sector will be described:

- * The composition of the public sector;
- * The purpose of public sector organisations; and
- * The characteristics of public sector organisation.

3.1 Composition of the *public sector* and the *public service*:

The *public sector* comprises a variety of government-owned or sponsored organisations. It may also include the *public service*, whose institutions are involved in the administration of the State, but usually excludes "government owned enterprises engaged in industrial and/or commercial activities"⁷(Stieber, 1986:3). The scope of services provided by the *public sector* is determined by the "constitutional, political and social system" of each country (Treu, T. *et al.*, 1987:4). Subsequently, local government can form part of either the *public sector* or *public service* depending on the applied interpretation of each term by a State (Stieber, 1986:4).

For the purposes of this Chapter, and the following Chapter (Chapter Five), both the *public sector* and *public service* include local government.

3.2 Purpose of public sector organisations:

Public sector organisations render a variety of basic services to the community (Gildenhuis, 1983; Lewin, D. *et al.*, 1988; Lieberman, 1980). These can be categorised into *order and protection*, *social welfare* or *economic welfare* needs (Gildenhuis, 1983:30). The types of services rendered by the State vary according to their shortage or a need to realise "a governments' goals and objectives" (i.e. broader policy objectives) (Gildenhuis, 1983:31). However, a number of characteristics distinguish public sector organisations.

3.3 Characteristics of public sector organisations:

The characteristics of public sector organisations are described in the following contexts:

- * The difference between public sector organisations and private sector organisations; and
- * The unique constraints of public sector organisational functioning.

3.3.1 A comparison of public and private sector organisations:

The following characteristics distinguish public sector organisations from private sector organisations:

- * *Time perspective:* Political necessities and a budgetary calendar limit time scope for public managers while "market developments, technological innovation and investment, and organisation building" extend time perspectives for private sector managers;
- * *Service duration:* Appointed public managers have a limited service period unlike their private sector counterparts who enjoy unlimited employment;

- * *Performance measurement:* Limited performance measures are applied to public service managers whereas in the private sector a host of checks and balances such as financial returns and market share apply;
- * *Personnel constraints:* In the public sector the interests of elected and non-elected personnel may conflict with one another;
- * *Equity and efficiency:* In the public sector emphasis is placed on the equitable provision of services while in the private sector the "profit motive" is underscored by efficiency;
- * *Process:* Public sector management tends to be open to public scrutiny (i.e. "transparency") while in the private sector such practices are less exposed;
- * *Press and media handling:* Public sector decisions can be closely followed and critically debated by the media, whereas private sector decisions normally remain confidential in the face of competition;
- * *Persuasion and direction:* A wide variety of pressures often dictate a degree of compromise amongst public officials, while in the private sector uniform decisions are commonly the order of the day;
- * *Legislative and judicial impact:* Public sector managers often remain closely scrutinised by "legislative oversight groups or even judicial orders", while this practice is uncommon in the private sector; and
- * *The lack of a clear bottom line:* Public sector managers are constrained by the lack of a clear bottom line which is established in the private sector by means of key organisational indicators such as "profit, market performance

and survival".

(Dunlop in Golembiewski & Gibson, 1983:5-6; Metcalf & Richards in Brynard, 1992:6-10)

These differences can be summed up by the following constraints influencing the function of public sector organisations.

3.3.2 Constraints faced by public sector organisations:

In summation, public sector organisations can be distinguished by the following unique constraints:

- * *Unavoidability*: Citizens must contribute to public sector organisations in order to be served;⁸
- * *Allegiance*: Organisations are backed by the powers of the State and are therefore expected to owe allegiance to it;
- * *Priorities*: Organisations have a moral obligation to prioritise and render services on an equitable and continuous basis;⁹
- * *Size*: The variety of services needed can result in a large number of multi-purpose organisations (for example local authorities);
- * *Politicisation*: Organisations are managed by top bureaucrats or officials, some of whom are elected and have a political mandate to fulfil;¹⁰

- * *Performance:* Managers experience difficulty in assessing relative performance standards due to their ambiguity, and the corollary of endeavouring to qualify these in the face of high public expectation;¹¹
- * *Dual standards:* Public managers are expected to perform as "paragons of virtue" under public scrutiny (i.e. be above reproach); and
- * *Monopolistic:* Public services are usually unique in that no alternative services of a similar nature are provided.

(Caiden, 1982:14-16; Jun, 1986:22; Mikesell in Gildenhuis, 1983:31-32).

From the above, it can be said that public sector organisations function within a number of unique environments.

3.4 The public sector environment:

Public management, as described above, is shaped by a variable environment which public organisations must function within (Jun, 1986:31; Nigro & Nigro, 1980:4-11). This can be illustrated by the wide variety of policies applied, for example, those controlling organisational accountability and regulating specific employment practices (Heneman & Schwab, 1978:271; International Labour Organisation, 1989a:110; Lewin, D. *et al.*, 1988:23; Treu, T. *et al.*, 1987:5).

In this context, the following environments are described and their influences on labour relations noted:

- * The Political environment;
- * The Socio-economic environment;

- * The Legislative environment; and
- * The Organisational environment.

Furthermore, a brief outline of related environmental influences on labour relations practice is included.

3.4.1 The political environment:

The State has a civic duty (Freeman, 1986:44) to safeguard the *public interest* (Aaron, Najita & Stern, 1988:213). However, the manner and substance of applied policies "in the sense of *what* is decided, and *how* actions are decided" is determined by a prevailing *realpolitik* (Aaron, Najita & Stern, 1988:213; Corby, 1991:39; Lewin, D. *et al.*, 1988:148). *Realpolitik* is characterised by a mixture of political beliefs and loyalties as expressed by "public officials, executives or (local) legislators" whose relative strengths regulate *the body politic* (Lewin, D. *et al.*, 1988:98; Treu, T. *et al.*, 1987:11).

3.4.1.1 Influence on public sector labour relations:

The political environment can influence labour relations in a number of ways. In the case of divided political loyalties the political environment can create a sense of uncertainty or animosity amongst the parties to the labour relationship by engendering "differences of approach and random results in the process of determining conditions of employment" (Treu, T. *et al.*, 1987:11). On the other hand, a more unitary political system can entrench uniform labour policy¹² although extra-parliamentary group pressure can still be brought to bear on the government.

However, a particular issue is the influence of the political dichotomy of elected and non-elected officials in public sector organisations. This is briefly described below.

3.4.1.1.1 The political pressures of elected officials:

The dichotomy of interests between *elected* and *non-elected* employers officials can undermine the labour relationship in public sector organisations. Subsequently, difficulties encountered in formulating key labour policies can be ascribed to undue political influence or bias due, for example, to party-political interests.¹³ Prior to elections this dichotomy is usually most apparent in local or national electioneering campaigns which may, for example, make calls for "tougher" measures on labour disruptions and tighter fiscal policy. (International Labour Organisation, 1989a:105-106)

3.4.2 The socio-economic environment:

Public sector organisations operate on an *equity* basis, whereby services are provided at *cost* to the public. Public sector expenditure must therefore conform to set budgetary allowances or incomes accrued from society, *inter alia*, by means of taxation. (Bendix, 1989:73; Lewin, D. *et al.*, 1988:148; Lieberman, 1980:51)

3.4.2.1 Influence on public sector labour relations:

The States' duty to "manage the national economy and determine the level of expenditure" highlights the vulnerability of public sector trade unions to State fiscal policy and "changing economic conditions" (Horton in Hays & Kearney, 1983:199; Rhodes, 1985:303).¹⁴ This situation can be illustrated by periods of escalating budgetary costs which are generated by inflationary spirals, thereby requiring some form of fiscal discipline, *inter alia*, limiting (or "freezing") public employment salary levels¹⁵ (Hays & Kearney, 1983:191).

3.4.3 The legislative environment:

The legislative environment is shaped by the prevailing "social, political and economic systems" and the "accepted norms of the population, at that time" (Fick & Hugh High, 1987:126).

3.4.3.1 Influence on public sector labour relations:

The legal environment influences labour relations in a number of ways. In the public sector, labour law modifies the labour relationship by limiting the "extent of public sector unionisation" and directing "the process and outcome of negotiations" (Lewin, D. *et al.*, 1988:47). Other key factors shaping the nature of labour relations in this context include:

- * The interventionary nature of the State itself;
 - * The subsequent rigour with which legislation is applied;
 - * The nature of public employment;¹⁶
 - * Whether actual or customary processes are adhered to; and
 - * The complex and bureaucratic disposition of labour legislation.
- (Heneman & Schwab, 1978:275; Ibbs in Corby, 1991:39; International Labour Organisation, 1989a:108).

3.4.4 The organisational environment:

The organisational environment is broadly characterised by the unique policies and practices adopted within.

3.4.4.1 Influence on public sector labour relations:

A ubiquitous organisational culture, coloured by the beliefs, customs and values of management and unions, shapes the *modus operandi* of the labour relationship (Metcalf

& Richards in Brynard, 1992). Although informal, the prevailing *organisational climate* determines the nature of applied practices. Examples include, deep-rooted employee or employer intransigence and "controversial, difficult, and time-consuming" changes to the workforce attitude (Van der Merwe in Brynard, 1992:10).

3.5 Public Personnel Management in public sector organisations:

The following aspects of public personnel management will be described:

- * A description of the term *Personnel Management*;
- * Characteristics of *Public Personnel Management*; and
- * A definition of *Personnel Management*.

3.5.1 A description of *Personnel Management*:

As with the above-described features of *Public Management*, *Public Personnel Management* can be distinguished from *Public Personnel Administration* by its dynamic nature. Subsequently, *Public Personnel Management* is characterised by a holistic and more flexible approach with regard to the management of personnel within an organisation (Shafritz, 1975:x). However, both terms are often interchangeably applied in practice (Stahl, 1962:15).

3.5.2 Characteristics of *Public Personnel Management*:

The emergence of *Public Personnel Management* is ascribed to a variety of contributing trends, namely:

- * A growing need for specialised skills;
- * A changing managerial perception of the nature of its workforce; and

- * A recognition by management of labours' integral role in improving organisational performance.¹⁷
(De Wet, 1987:14; Siegel & Myrtle, 1985:ix; Whicker & Areson, 1990:181)

Public Personnel Management is characterised by the following functions:

- * The application of labour policies;¹⁸
 - * The establishment of funds; and
 - * The development of key staff structures.
- (De Wet, 1987:14)

Subsequently, this management function has led to the further establishment of specialised personnel functions, notably *Labour Relations*. This trend can be illustrated in the case of local government where the Labour Relations Units function in, *inter alia*, Canada, the United Kingdom and the United States of America. (Lewin, D. *et al.*, 1988; Siegel & Myrtle, 1985; Treu, T. *et al.*, 1987) However, the nature of the *public personnel management* approach or the specialised personnel function adopted by organisations, is contingent on the historical and legal foundations of that organisation (Siegel & Myrtle, 1985:10).

3.5.3 A definition of *Public Personnel Management*:

For the purposes of this thesis, the following definition of *Public Personnel Management* applies:

The totality of concern by a public sector organisation with its workforce and the application of related policy for its procurement, deployment, and maintenance.

(Adapted from Siegel & Myrtle, 1985:2; Stahl, 1962:15)

4. Characteristics of labour relations in the public sector:

Public sector labour relations can be distinguished by a number of characteristic features, namely:

- * The wide variety of methods employed for determining conditions in the public sector;
 - * A detailed and rigorous application of regulatory controls; and
 - * A restricted bargaining scope, more frequent use of joint consultation (particularly with regard to wages and management rights) and the proscription of the right to strike.
- (Treu, T. *et al.*, 1987:14-25)

These characteristics can be categorised into a number of labour relations *models*.

4.1. Labour relations *models* for the public sector:

In summation, public sector labour relations practices can be distinguished by three rudimentary models, namely:

- * The *private sector model*: Whereby public employees are granted similar rights as those of their private sector counterparts;
 - * The *modified private sector model*: Which excludes certain private sector practices or rights, such as the right to strike or bargain and entrenches the practice of merit performance promotions;¹⁹ and
 - * The *restricted model*: Where, for example, the bargaining scope, grievances and lay-offs are proscribed in addition to those conditions found in the modified private sector model.
- (Stieber, 1986:6-7)

5. Parties to the labour relationship:

The following parties and their role in the labour relationship will be described:

- * The employers;
- * The trade unions; and
- * The State.

5.1 Employers:

The following aspects of *employers* will be briefly described:

- * Their characteristics as a party; and
- * Significant trends in public sector labour relations.

5.1.1 Characteristics:

Employers are responsible for a wide range of functions in public sector organisations. However, this has led to confusion with the generic qualities of the term *employer*.

Factors contributing to this confusion include:

- * The general misperception that all "public sector managers" are employers;
 - * The inability to distinguish between the State as employer and its other cardinal duties as legislator, conciliator and regulator; and
 - * The commonly-held notion by unions that "employers" comprise the "public" as well in all matters pertaining to the labour relationship.²⁰
- (Bendix, 1989:73; Weiler, 1980:239)

As noted above, a major characteristic of public sector employers is the distinction between *elected* and *non-elected* employer officials. *Elected* employer officials are voted

into administrative office for a specified period of time, while *non-elected* employer officials are promoted into positions of responsibility, usually for a life-long career.

5.1.2 Employers in the labour relationship:

A significant trend in public sector labour relations has been the growth in the number of employer associations representing employer interests in the labour relationship.

5.1.2.1 Growth in employer representation:

The need for unified employer representation has become a significant issue in public sector labour relations. This can be ascribed to two broad concerns, namely:

- * The rapid unionisation of the public sector workforce; and
- * The more effective challenge posed by trade unions with regard to employer authority or sovereignty.

(Lewin, D. *et al.*, 1988:148)

Such representation can take place at a number of levels, notably, the *organisational level*, *sectoral level*, *national level* or a mixture of these levels (Stieber, 1986:5)²¹.

5.2 Trade unions:

The following aspects of *trade unions* will be briefly described:

- * Their characteristics as a party; and
- * Significant trends in public sector labour relations.

5.2.1 Characteristics:

Public sector trade unions comprise a "bewildering variety of principles and organisational forms" (Winchester in Treu, T. *et al.*, 1987:217). In summation however, trade unions in the public sector can be broadly characterised by the following features:

- * Their large membership;
 - * Limited bargaining powers; and
 - * Lack of certain fundamental labour rights.
- (Stieber, 1986:5)

In this context, a description of their role in the labour relations follows.

5.2.2 Trade unions in the labour relationship:

The following features of trade unions in the labour relationship will be described:

- * Growth of public sector trade unionism; and
- * Type and level of membership.

5.2.2.1 Growth in public sector trade unionism:

A key feature of public sector trade unionism is its relatively rapid growth since the late 1960's and 1970's (International Labour Organisation, 1989a:111; International Labour Office, 1986:69; Pankert, 1980; Treu, T. *et al.*, 1987:5-7). This trend can be ascribed to a number of major developments during this period, *inter alia*:

- * The promulgation of *International Labour Organisation Convention 151* of 1978, which recognises the right to associate in the public sector and the right of public employees to participate with public authorities in

determining terms and conditions of their employ;²²

- * The perceptual changes in managerial attitude towards the role of the workforce (as *potential assets* rather than *givens*);
- * The growing scarcity of skilled personnel;
- * The concerted effort by public sector trade unions for the protection of workforce interests, especially during turbulent economic and political periods;²³
- * The relatively stable nature of public employment; and
- * The growing *de facto* recognition of employee associations.

(De Wet, 1987; Freeman, 1986:44; International Labour Office, 1986:71; International Labour Organisation, 1989a:111; Treu, T. *et al.*, 1987:208; Whicker & Areson, 1990:181; Winchester in Treu, T. *et al.*, 1987:217).

5.2.2.2 Type and level of membership:

The type of membership represented by public sector trade unions varies internationally. Generally, trade union membership categorisation in the public sector involves either *class*, *specific grade* (i.e. low, middle and high), *occupational* or *organisational* qualifications, or a *mixture* of the above. Similarly, as with the employers, public sector employees can be represented by their trade unions at the *organisational level*, *industrial level*, *national level* or a *mixture* of the above. (International Labour Organisation, 1989a:110-115)

Examples of both the type of membership represented and the level at which such representations can occur is illustrated by the following international examples:

- * *Workforce grade and class representation*: in Nigeria, Sri Lanka, the United Kingdom and Venezuela;²⁴
- * *National representation*: in Italy, Sweden, the United Kingdom and Mexico - where a single public sector trade union²⁵ represents the interests of all public sector employees;²⁶
- * *Organisational representation*: in Peru and Malaysia²⁷ where a highly devolved level of worker representation exists;
- * *Occupational representation*: in Australia, Peru and some States in the United States of America.

(International Labour Organisation, 1989a:108-115)

5.3 The State:

In summation, the rapid growth in public sector unionisation and subsequent trade union pressure for key labour rights, has challenged the role of the State in the labour relationship in terms of the degree of interventionism applied. A key dilemma for the State in the labour relationship is determining a suitable midpoint between the provision of uniform and continuous public services and the sanction of fundamental labour rights.²⁸ (Lewin, D. *et al.*, 1988; Nyembe, 1992; Pankert, 1980)

6. Conducting the labour relationship in the public sector:

As noted before, the primary objective of public sector labour relations is to institutionalise labour conflict. However, a variety of labour relations practices have evolved. These approaches can be distinguished by the relative powers and level of co-operation enjoyed between the parties (Stieber, 1986).

The distribution of powers in the public sector is characterised by the "financial power and control of the central union and government bodies over their sectoral and local constituents; the scope of the unit where decisions are made; [and] the extent to which the lower levels of decision-making are constrained by rules laid down at a higher level" (Treu, T. *et al.*, 1987:25).

The distribution of powers and protection of group interests is a particular concern in public sector labour relations: the key issue being the conflict of interests between employers and trade unions in terms of their relative rights in the workplace. This issue is described in the following manner:

- * The issue of employer sovereignty; and
- * The issue of trade union rights.

6.1 The issue of employer sovereignty:

Although not a *right* in the true sense of the term, the issue of employer sovereignty within public sector organisations is nevertheless contentious. Essentially, employer sovereignty implies the restriction or curtailment of various trade union rights which impinge on the right of employers to determine workplace policies. This "right" is therefore justified on the grounds that the State must *safeguard the interest and welfare of the public* by providing public services on a *continuous, efficient and cost-effective* basis. (Christie, 1992:12-15; Heneman & Schwab, 1978:270; International Labour Organisation,

1989b:19-20; Wellington in Freeman, 1986:49-52).

Subsequently, it is contended by the State (as employer) that an extension of any fundamental trade union rights in the public sector would harm the public by:

- * Threatening the provision of services, which due to their *monopolistic nature*, if prevented, could not be easily replaced;
- * Putting *extraordinary pressure* on employers to acquiesce speedily to trade union objectives in order to secure the provision of services halted; and
- * Doing so at the cost of the public by means of increased taxation.

(Bendix, 1989:214; Lewin, D. *et al.*, 1988:29; Rhodes, 1985:303-304; Siegel & Myrtle, 1985:377-378; Wellington in Freeman, 1986:49-52).

6.2 The issue of trade union rights:

On the other hand, it is maintained that private and public sector employees should be treated alike (International Labour Organisation in Bennett, 1988:70). This view is based on the notion of *civil rights*, where public sector employees, as with the rest of the citizenry, must contribute to taxes in order to subsidise public services (Bendix, 1989:73). Subsequently, it is proposed that trade unions ought to have a *moral right* to participate in decisions relating to their own fate (Bendix, 1989:73; International Labour Organisation, 1989b:19).

In terms of the above arguments by the State, justifying a prohibition of the fundamental labour rights in the public sector, it is counter-proposed that such rights would not harm the *interest and welfare of the public* on the grounds:

- * That trade unions are sensitive to *public opinion*;
- * That trade unions have a moral obligation to perform their civic duties;
- * That trade unions are influenced by the "disciplinary effect" of the budget in terms of limiting their potential wage demands;
- * That the costs of dispute generally outweigh their potential reward;²⁹
- * That the citizenry is free to move to more "favourable" locales (in the case of local government), thereby undermining their potential source of power; and
- * That trade unions generally recognise the need for *conditional rights* in *truly* essential services.

(Freeman, 1986:49-52, International Labour Organisation, 1989b:20)

These issues are examined in more detail with regard to three fundamental labour rights in the public sector, namely:

- * The *right to associate*;
- * The *right to bargain*; and
- * The *right to strike*.

6.2.1 The right to associate:

The following aspects of the right to associate will be described:

- * Justifying the right to associate; and
- * Current trends.

6.2.1.1 Justifying the right to associate:

The desire for greater "individual freedom, broader representation and participation, individual recognition, and the improvement of the quality of working life" for public employees has led to the demand for the right to associate (Jun, 1986:31).

6.2.1.2 Current trends:

The right of public sector employees to associate is endorsed by *Convention No. 87, Article 2* of the *International Labour Organisation*. However, it exempts the police and armed forces from this right. (International Labour Organisation, 1989b:20)

Convention No.87 is founded on the *Labour Relations (Public Service) Convention No. 98* of 1978 (No.151) and *Recommendation* of 1978 (No.159). Significantly, *Convention No.87* appeals for "protection against anti-union discrimination and interference in the affairs of public employees' organisations" by the State. (International Labour Organisation, 1989b:20)

Convention No.98 (No.151) interlinks the *right to associate* with the *right to bargain*. Furthermore, this Convention defines the "procedures for determining the terms and conditions of employment of public employees, whether through collective bargaining or otherwise, and settlement of disputes". (International Labour Organisation, 1989b:20)

6.2.2 The right to bargain:

The following aspects of the right to bargain will be described:

- * Justifying the right to bargain; and
- * Current trends.

6.2.2.1 Justifying the right to bargain:

Factors which have been suggested to contribute to the demand for a right to bargain in the public sector, include:

- * A changing attitude in industrial society towards the importance of fundamental labour rights;
- * A growing shortage of skilled labour;
- * An increasing concern with productivity; and
- * The need for fairness in the face of pragmatic realities.

Each of these factors is described and, in some instances, counter-arguments added.

6.2.2.1.1 A changing attitude by industrial society:

In summation, the changing attitude of employers with regard to extended bargaining rights in the public sector, can be ascribed to the following developments:

- * The relative growth in trade union power undermining the contention of State sovereignty;³⁰
- * The need public demand for greater accountability by all parties to the labour relationship; and
- * The desire for service stability in the face of increasing industrial action.

(Lieberman, 1980:15; Pankert, 1980:724; Summers in Lewin, D. *et al.*, 1988:90-92; Siegel & Myrtle, 1985:377-383).

6.2.2.1.2 A shortage of skilled labour:

Growing shortages of skilled labour have undermined the service capacity of public sector organisations. Therefore, a key concern is the attraction and retention of a qualified workforce. However, a poor employment image due to the "relatively low wages and the poor likelihood of progressing in the organisation through promotions" has raised the need for a competitive salary scale as determined by market conditions. This trend, in effect, has highlighted the usefulness of collective bargaining in determining such wage adjustments. (Hays & Kearney, 1983:194)

6.2.2.1.3 Productivity:

Two opposing views in terms of the effect of collective bargaining rights on productivity are proposed.

On the one hand, employers contend that a prohibition of bargaining rights for public employees would safeguard the State from trade union exigencies, thereby avoiding subsequent low levels of productivity and the need to compromise on service quality³¹(Hays & Kearney, 1983:193-195). On the other hand, trade unions assert that collective bargaining would improve productivity by motivating the workforce as a result of consensus (Flanagan, 1990; Freeman, 1986:62; Lewin, D. *et al.*, 1988:516).³²

In the latter context therefore, *productivity* is described as *an attempt through the process of collective negotiations to obtain changes in work rules or practices that will permit the employer to reduce the cost or improve the quality or quantity of the services it provides.* (Lewin, D. *et al.*, 1988:224).

6.2.2.1.4 Need for fairness and pragmatic realities:

Finally, "elementary principles of fairness" as a result of the *de facto* growth of informal bargaining practices in the public sector, have contributed to a growing pressure for a formal recognition of this right.³³ In particular, the following factors have spurred such developments:

- * The commonplace application of collective bargaining in the private sector;³⁴
- * The relative benefits accrued by its practice in some States;³⁵ and
- * The subsequent growth of public interest in public affairs.³⁶

(Lieberman, 1980:24; Weiler, 1980:214-217).

6.2.2.2 Current trends:

Essential service workers are generally prohibited from collective bargaining on the grounds that, in particular, this right would threaten the States' "economic development" (Pankert, 1980:733; Whicker & Areson, 1990). In the case of *truly* essential services, it remains a bone of contention for unions in services whose qualification as "essential" is challenged. As a result, the provision of limited consultation or bargaining rights in these services has in many States been spurned as a form of compromise (International Labour Organisation, 1989b:20).

The *right to bargain* for public sector trade unions is underwritten by *Convention No. 151* and *Recommendation No.159* of the International Labour Organisation (International Labour Organisation, 1989b:20). Significantly, *Convention No. 87* states that "legislation prohibiting negotiations in respect of matters relating to conditions of work is inconsistent with the principles of *Convention No.98*" (which interlinks the *right to bargain*

with the *right to associate*) (International Labour Organisation, 1989b:19). A further characteristic of these Conventions is their stipulation for *equitable* collective bargaining rights in the public sector.

Many States have recognised the *right to bargain* as the "primary method for determining wages and work conditions" in the public sector (Lewin, D. *et al.*, 1988:23; Treu, T. *et al.*, 1987:17). Examples include, Australia, Belgium, Canada, Denmark, Finland, Italy, New Zealand, Norway, Sweden and nearly 40 States in the United States of America (International Labour Organisation, 1989a:110-115).

6.2.3 The right to strike:

The issue of the right to strike, as with the above *rights*, is contentious in the public sector (Christie, 1992:14; Freeman, 1986:42; International Labour Office, 1986:72; Treu, T. *et al.*, 1987:35; Weiler, 1980:213-214). The following aspects of the right to strike for public sector trade unions will be examined:

- * The justification for and against a right to strike;
- * Key features regarding the issue of the right to strike; and
- * Key trends in this regard.

6.2.3.1 Justifying the right to strike:

Reasons justifying the right to strike for trade unions in the public sector include:

- * The need to safeguard public employee interests;
- * The need to curtail State exigencies;
- * The need for a principle of fairness;
- * The lack of public sector market constraints; and

- * The continued use of the strike weapon.

6.2.3.1.1 The need to safeguard public employee interests:

Extensive legislation is often provided for securing public employee jobs and protecting workers in terms of unfair labour practice. However, due to a potential for the employers misuse of powers, a right to strike is viewed as an essential mechanism for keeping employer decisions in check. (Aaron, Najita, & Stern, 1988:161; Siegel & Myrtle, 1985:378; Sing & Bendix, 1993:68; Wissink in Fox, Schwella & Wissink, 1991:199)

6.2.3.1.2 The need to curtail State exigencies:

As noted above, trade unions are concerned with unchecked employer powers. This notion is grounded on an evident lack of trust between both parties and often at trade union incredulity with the States' self-appointed role as *fair and impartial* broker in its own personnel matters.³⁷ (Morris, 1986:194; Sikula, 1976:416)³⁸

6.2.3.1.3 The need for a principle of fairness:

The commonplace sanction of the right to strike in the private sector and the belief that strikes in that sector can also threaten the *public welfare*, is suggested to justify this right for public sector trade unions. Subsequently, the right to strike is viewed as an integral feature of democratic society (Ben-Israel, 1988:18; Douwes Dekker, n.d.:37-61; Hernandez, 1983:3; Lieberman, 1980:26; Sing & Bendix, 1993:45-68; Weiler, 1980:223)

6.2.3.1.4 The lack of public sector market constraints:

Unlike the private sector, the public sector has a broad tax- base and enjoys relative service stability (Siegel & Myrtle, 1985:378). Consequently, it is suggested that any potential strike damage on the public would be relatively minimal. (Freeman, 1986:42;

Weiler, 1980:219)

6.2.3.1.5 The continued use of the strike weapon:

Finally, as with collective bargaining and other rights, the continued occurrence of strikes in the public sector has undermined the rationale for a prohibition of this right.³⁹A trend in this regard has been the adoption of surrogate forms of industrial action, such as *go-slows* or *work-to-rules*, which are more difficult to regulate. (Morris, 1986:198; Pillay & Bendix, 1993:46,55; Siegel & Myrtle, 1985:378-9; Sing & Bendix, 1993:68; Stieber, 1986:7; Weiler, 1980:219; Whicker & Areson, 1990:210)

In conclusion, Thompson (in Benjamin, Jacobus & Albertyn, 1988:69) suggests that:

"The right to strike figures as the acid test for any system of Labour Relations. Its affirmation mend both efficacy and integrity to the bargaining process, while its denial amounts to an undercutting of that process."

6.2.3.2 Justifying a prohibition of a right to strike:

Reasons justifying a prohibition of the right to strike for trade unions in the public sector, include:

- * The threat to State sovereignty;
- * The *essential* nature of public services;
- * The potential for excessive trade union powers; and
- * The increase in financial and other costs.

6.2.3.2.1 The threat to State sovereignty:

As noted above, it is asserted that a right to strike in the public sector would undermine

State sovereignty. Specifically, it is suggested that the duties of public officials serving the community would be disrupted by a small minority (i.e. the trade unions) whose demands would be at the cost of the broad majority (i.e. the public).⁴⁰In addition, in a broader context, a right to strike would also distort the political process by challenging democratically elected governments in their duties to the community.

(Ben-Israel, 1988:23; Brassey *et al.*, 1987:124; Christie, 1992:14-19; International Labour Organisation, 1989a:120; Lewin, D. *et al.*, 1988:324; Morris, 1986:198; Pillay & Bendix, 1993:45; Siegel & Myrtle, 1985:377; Sing & Bendix, 1993:68; Treu, T. *et al.*, 1987:27; Weiler, 1980:139,218-220).

6.2.3.2.2 The essential nature of public services:

The essential nature of public services is a key reason for prohibiting the right to strike. The State contends that a right to strike could imperil the lives and welfare of its citizenry as a result of the disruption of such services. As Lewin, D. *et al.* (1988:415) explains:

"... the public is a monolithic entity that is rather helpless in the face of collective withdrawal of important public services and hence needs and wants to be protected from such withdrawals."

(Lewin, D. *et al.*, 1988:415; Rhodes, 1985:304; Sing & Bendix, 1993:68; Wissink in Fox, Schwella & Wissink, 1991:199)

6.2.3.2.3 The potential for excessive trade union powers:

As noted above, it is contended that a right to strike would extend trade union powers which would increase the possibility for a disruption of services. This view is particularly

ascribed to the monopolistic nature of the public sector. (International Labour Organisation, 1989a:120; Lewin, D. *et al.*, 1988:324; Pillay & Bendix, 1993:45; Rycroft & Jordaan, 1990:214; Weiler, 1980:219)

6.2.3.2.4 The increase in financial and other costs:

It is contended that a right to strike would inevitably cause an increased tax burden on the community. Other costs incurred would include: lost wages, a decline in productivity levels, wasted time and human resource skills, potential retrenchments and a loss of public sympathy. Finally, it is asserted that even the "threat" of a trade union strike is costly due to its unpredictability. As Morris (1986:11) explains:

"Sanctions short of strikes can sometimes cause damage equivalent to that of a total strike and many public sector campaigns have been based on such tactics."

(Aaron, Nijita & Stern, 1988:162; Miewald in Shafritz, 1975:38; Morris, 1986:129; Pillay & Bendix, 1993:48; Treu, T. *et al.*, 1987:35; Whicker & Areson, 1990:208; Wissink in Fox, Schwella & Wissink, 1991:199)

6.2.3.3 Approaches to the right to strike:

A number of optional approaches concerning the right to strike in the public sector can be applied, namely:

- * *No right to strike* (no compulsory arbitration);
- * *An extensive right to strike* with minor limitations including: a prohibition of this right for *essential service* workers, advance notice of intended strike

action and the employers' right to recall certain workers where *essential* disruptions occur;

- * *A limited right to strike* with no such right in *essential services* and no access to mediation, conciliation or arbitration; and
- * *A restricted right to strike*, particularly in *essential services*, with the provision for compulsory arbitration where the right to strike does not apply.

(Nyembe, 1992:45)

The above approaches can be categorised into those approaches proscribing the right to strike and those sanctioning the right to strike in the public sector. Both will be briefly described.

6.2.3.3.1 Approaches prohibiting the right to strike:

A number of countries prohibit the right to strike in the public sector. According to the International Labour Organisation (1989a:120), these include roughly 30 developing countries. Factors contributing to this approach include, the ideological charter of the State (for example marxist or authoritarian States)⁴¹ and a broad-based notion of *essential services*. Furthermore, in some countries such prohibitions are not necessarily legal. For example in Australia, industrial action is banned *de facto* but not *de jure* (International Labour Organisation, 1989a:121). Where this approach is adopted, a variety of other restrictions are usually applied, namely:

- * Qualifying the trade union membership;
- * Limiting the scope of statutory immunities against civil liabilities;
- * Awarding the discretion of courts to grant interlocutory injunctions;

- * Placing restrictions on picketing;
- * Securing protection against union discipline; and
- * Supporting restrictions by professional organisations.

(Morris, 1986:10; International Labour Organisation, 1989a:121).

A key feature of those States opposing the right to strike for public sector employees is the application of *cooling-off* periods during negotiations or consultation in order to allow parties to reconsider proposals without the disruptive influence of "heat-of-the-moment" decisions". (Ben-Israel, 1988:23; Bendix, 1989:214; Hernandez, 1983:6; Lieberman, 1980:4-30)

6.2.3.3.2 Approaches sanctioning the right to strike:

A notable trend has been the growth of the recognition of the right to strike for public sector employees internationally (Benjamin, 1989:45, Ben-Israel, 1988:114, Christie, 1992:18, International Labour Organisation, 1989a:121, Morris, 1986:191-192). Examples where strikes are sanctioned include, Canada, France, Italy, Norway, Sweden and a number of States in the United States of America (International Labour Organisation, 1989a:120; Pillay & Bendix, 1993:46). A number of factors have contributed to this trend, namely:

- * The acceptance by some States of their inability to prevent strikes;⁴²
- * The cost of annulling employment contracts in the event of strikes;
- * The growing *de facto* acknowledgement of this right for public sector workers;
- * The variety of interpretations of *essential services* and the subsequent lack of any standard criteria;

- * Growing dissatisfaction with the maxim of "government sovereignty" by workers, on the premise of changing social realities (notably declining work conditions);
 - * The recognition of the dispensability of previously "indispensable" services; and
 - * The realisation of the limited rather than "awesome" powers of trade unions in the public sector enjoying this right.⁴³
- (Aaron, Najita & Stern, 1988:205; Lewin, D. *et al.*, 1988:327)

Most these States however, include a number of requisite conditions before a strike can be sanctioned. Examples of some of these approaches follows.

6.2.3.3.2.1 Conditions for allowing a right to strike:

Some international examples of conditions applied before a strike can be sanctioned in the public sector follow:

- * In *France* strikes can only be undertaken once a variety of administrative procedures have been satisfactorily completed;
- * In the former *West Germany*, the right to strike (with the exception of *beamte*)⁴⁴ is condoned during the negotiation phase on two conditions: that they do not "destroy the employers activities" and that they remain short (time-length);⁴⁵
- * In *Mexico* a key condition involves the use of a strike ballot where a two-thirds majority is required before a strike can be adopted;
- * In *Italy* and *Sweden* a "social contract" between the State and trade unions

requires a degree of self-regulation by the trade unions which includes the provision for minimum essential services and the protection of basic public interests" in the event of a strike;⁴⁶ and

- * In *Canada, Italy, the United Kingdom* and the *United States of America* certain forms of industrial action such as the use of "rotating strikes, secondary strikes and political strikes" or "spontaneous strikes" are specifically prohibited.

(International Labour Organisation, 1989a:120-122; Kahn-Freund, 1977:234; Morris, 1986:150; Pillay & Bendix, 1993:46)

6.2.3.4 Current trends:

The right to strike for trade unions in the public sector has become "less of a straight yes or no issue" in recent years (Freeman, 1986:66; Treu, T. *et al.*, 1987:36). However, a number of key trends can be distinguished, namely:

- * The preference for a limited right to strike;
- * The adoption of a *peace obligation*;
- * The restrictions imposed on skilled personnel; and
- * The issue of ambiguous legislation.

6.2.3.4.1 The preference for a limited strike:

A key trend has been the adoption of a limited right to strike in the public sector. This approach is usually applied to a specific class of public sector employees and on the condition that the health, safety or welfare of the public is not compromised, or limited (Boshoff & Bendix, 1993:36).

6.2.3.4.2 The adoption of a *peace obligation*:

Another trend is the inclusion of a *peace obligation*. This obligation is characterised by a number of requisite steps which must be completed before a strike can be recognised. In addition, provision is usually made for a *skeleton crew* which ensures the continuation of *essential services*. (Morris, 1986:7; Weiler, 1980:187,236).

6.2.3.4.3 The restrictions imposed on skilled personnel:

An associated trend is the relationship between skill levels and the complexity of conditions applied. Subsequently, occupations requiring high skill levels are usually required to fulfil more preconditions before undertaking industrial action. This is attributed to their scarcity and relative importance. On the other hand, services requiring limited job skills usually enjoy relatively fewer restrictions (Weiler, 1980:236). A further feature has been the concomitant right of employers to a lock-out, in the instance where public sector trade unions have been granted the right to strike (Christie, 1992:26).

6.2.3.4.4 The issue of ambiguous legislation:

In some States the right to strike is ambiguous. In Belgium, for instance, legislation specifically prohibits this right for public employees, while sanctioning the right to associate (which embraces the right to strike). Similarly, in Austria and Denmark public employees enjoy a *de facto* right to strike, while this right is banned by law. In Denmark the prohibition of this right also instructs *striking* public sector employees to return to work in case of industrial action. (International Labour Organisation, 1989a:122)

As noted above, a key factor in the determination of labour rights is that of *essential services*.

6.2.4 The issue of *essential services*:

The definition and qualification of *essential services* varies according to the specific conditions of each State (Thomas, 1989:143). Subsequently, the following aspects of essential services will be examined:

- * The qualifications adopted;
- * The use of a broad definition;
- * The use of an enumerative method; and
- * Key trends in the interpretation of essential services.

6.2.4.1 Qualifying *essential services*:

"Essential" commonly connotes a vision of "unacceptable harm" to the public (Weiler, 1980:220). Therefore a key measure of *essentiality* is the potential cost of disrupted services as a result of "public violence and/or very serious harm to public health and environment" (Christie, 1992:20). Consequently, the notion of *public welfare* is integral to the applied definitions of "essential services". However, as noted previously, the types of services which fulfil the above qualification can vary. This is illustrated by the following proposed lists:

According to Weiler (1980:238), *essential services* comprise:

- * Public safety (Hospitals, police, firefighters);
- * Human needs (Teachers, social assistance, legal);
- * Economic activity (railways); and
- * Amenities (Garbage, parks, libraries, post).

While according to Christie (1992:18), such services comprise:

- * Maintenance;
- * Production or service;
- * Security;
- * Continuous services;
- * Urgent supplies;
- * Services required on humanitarian grounds; and
- * Services required on the basis of national economic interest.

It can be said that a variety of factors contribute to the differences in the interpretation of this term, *inter alia*:

- * Conflicting group interests;
- * Political agendas;
- * Public opinion;⁴⁷ and
- * Biased media coverage.

(Boshoff & Bendix, 1993:37; Lewin, D. *et al.*, 1988:413-415; Morris, 1986:9)

Generally, it can be concluded that the key criteria applied in defining *essential services* should consider the question: essential to whom? as well as the availability of substitute services (Morris, 1986:9,188; Pankert, 1980:727). In this context, two approaches for applying a definition will be described, namely:

- * The broad interpretive approach; and
- * The enumerative approach.

6.2.4.2 The broad interpretive approach:

States applying a *broad definition of essential services* generally ascribe the use of this approach to the unpredictability and instability of conditions within that State (Benjamin, 1989:730; Pankert, 1980:730).⁴⁸ Additional reasons for this approach include:

- * The notion that by applying a broad definition, specific demands or changes within the public sector do not complicate the *legal* task of its regulation;
- * The lack of a universal standard or criteria for specifying such services; and
- * The potential for a subjective interpretation by enumerating specific services.⁴⁹

(Benjamin, 1989:730; Morris, 1986:189-190).

Criticisms of this approach include:

- * Its "restrictive character" in terms of limiting or prohibiting fundamental labour rights; and
- * Its potential for including private sector services.

(Aaron, Najita, & Stern, 1988:203; Bendix, 1989:73; Ben-Israel, 1988:107; Christie, 1992:21; International Labour Office, 1986:67; Pankert, 1980:726; Weiler, 1980:221).

6.2.4.3 The enumerative approach:

The *enumerative approach* is characterised by the use of unique criterion for determining *essentiality* and therefore *essential services* (Morris, 1986:189; Pankert, 1980:729).

Examples of commonly listed *essential services* include the police, firefighters and prison officials (Christie, 1992:19; International Labour Organisation, 1989a:121)⁵⁰. A brief outline describing the advantages and disadvantages of the *enumerative approach* follow.

Advantages of the *enumerative approach* include:

- * The promotion of concern with the health and safety of the population;
- * The capacity to add or delete services not complying with the requisite qualifications by means of "expeditious legislature";
- * The provision of a clear distinction of services thereby avoiding the problem of repressive measures to services which are not considered "truly essential"; and
- * The opportunity for allowing "workable alternatives" to services deemed "essential", thereby alleviating potential strife or dissatisfaction for such workers.⁵¹

(Morris, 1986:8,189; Pankert, 1980:727-728)

Disadvantages of the *enumerative approach* include:

- * The inability to differentiate between relative "danger" of disputes in these services due to the complexity of evaluating the "manner of effect" (i.e.

"health, welfare and safety");

- * The potential for subjectivity thereby exposing the system to potential misuse or abuse; and
- * The lack of discrimination involving time period whereby services experiencing disruption can after a period of time fall within the category of "essentiality".

(Boshoff & Bendix, 1993:36; Morris, 1986:189).

6.2.4.3.1 Trends in the use of the enumerative approach:

The *enumerative approach* is commonly applied internationally.⁵² Factors contributing to the growing popularity of this approach include:

- * The endemic conditions of each State, namely the geographical, environmental, technological, social, economic, political and industrial concerns, and broadly, the mores and values of a State;⁵³
- * Uncertainty over the impact of fundamental labour rights, especially the right to strike in "essential services";
- * The preferred methodology for determining "essential services"; and
- * The diversity of public service functions and various pragmatic concerns such as the issue of service replacement.

(Benjamin, 1989:44,107; Benjamin, Jacobus & Albertyn, 1988:724; Centre for Applied Legal Studies, 1990:78; Christie, 1992:13-19; Morris, 1986:8-9;

Hodges-Aeberhard & Otero de Dios in Boshoff & Bendix, 1993:36;
Pankert, 1980:726-727,735-736)

6.2.4.4 A definition of *essential services*:

As noted above, a wide variety of interpretations of *essential services* are applied (Morris, 1986:191; Rycroft & Jordaan, 1990:214; Sing & Bendix, 1993:69). Examples include, specific "services necessary for public health and safety" and "all activities which the government may consider appropriate" (Morris, 1986:7).

For the purposes of this thesis, the following definition of "essential services" applies:

"One whose interruption would endanger the life, personal safety or health of the whole or part of the population"

(The Freedom of Association Committee of the International Labour Organisation in Ben-Israel, 1988:109).

6.2.5 Conditions where labour rights can be proscribed:

The International Labour Organisation submits that "under certain circumstances [where] governments might feel that the economic position of their countries [demand] at certain times stabilisation measures" a *temporary* curtailment of labour rights is condoned (International Labour Organisation, 1989b:20). However, the organisation stipulates that such restrictions must be "accompanied by adequate safeguards to protect workers' living standards" (International Labour Organisation, 1989b:20).

7. Overview:

This chapter described and examined a number of key public sector labour relations features. Notably,

- * The concepts and definition of *Public Administration* and *Public Management*;
 - * The composition, purpose, characteristics and environment of the public sector, and in this context, the *Public Personnel Management* function;
 - * The characteristics of labour relations in the public sector and key *models*;
 - * The characteristics and role of parties to the labour relationship; and
 - * The issue of *rights* in the labour relationship.
-

CHAPTER FIVE

LABOUR DISPUTES AND THEIR SETTLEMENT IN THE PUBLIC SECTOR.

1. Introduction:

This chapter outlines a background to labour disputes and their settlement in the public sector internationally, notably:

- * The causes of labour conflict in the public sector;
- * The categories of labour disputes;
- * The Processes of labour dispute resolution and settlement; and
- * The Approaches to labour dispute settlement.

2. Causes of labour conflict in the public sector:

A number of factors cause labour conflict in the public sector. These factors can be categorised into:

- * Environmental factors;
- * Behavioural factors; and
- * Structural factors.

2.1 Environmental factors:

The following environmental factors will be described:

- * The political environment;
- * The social environment;
- * The economic environment;
- * The legislative environment; and
- * The organisational environment.

2.1.1 The political environment:

Politics can be described as a form of conflict (Miewald in Shafritz, 1975:38).

Subsequently, political factors causing labour conflict can be broadly ascribed to the inherent tensions between the administrative and political organs of the State and the party-political pressures applied on the labour relationship. (Treu *et al*, 1987:11, Weiler, 1980:244)

2.1.2 The social environment:

The emergence of group interests within public sector employment can cause labour conflict. Examples of such group characteristics include skills, grades and racial or ethnic criteria which demand specific consideration within the workplace. (Ben-Israel, 1988:1-2; Eldridge in Wood, 1987:55)

2.1.3 The economic environment:

Two economically-related causes of labour conflict can be distinguished, namely: State intervention during an economic recession and poor relations between trade unions and the public.

During an economic recession, or as a result of excessive budgetary spending, the need for government intervention in the economy can arise. The nature and manner in which the State modifies existing labour policies can therefore cause labour conflict. Examples include the unilateral imposition of wage or salary "freezes", the proscription of key trade union rights (such as the right to strike), and a restriction on certain voluntary dispute settlement procedures¹.

Poor relations between trade unions and the public can also lead to labour conflict. This factor can be ascribed to the taxpayer's unwillingness to finance public employee demands, thereby pressuring public officials to refuse to accept trade union demands, and in some instances, apply "strong-arm" tactics for resolving such disputes.²

(International Labour Organisation, 1989a:105-117; Treu *et al*, 1987:21,43; Wissink in Fox, Schwella & Wissink, 1991:201)

2.1.4 The legislative environment:

Severe, complex or ineffectual labour legislation³ can trigger labour conflict. This is illustrated by a number of findings in the United States of America which concluded that a curvilinear relationship exists between the severity of labour law, complexity of applied labour relations machinery and the resulting level of industrial action. Similarly, such findings also concluded that "weak meet and confer laws" also led to a higher incidence of labour conflict. A key explanation for this trend is the emergent "patina of legitimacy" which underscores the use of power processes for resolving conflict.⁴ (Aaron, Najita & Stern, 1988:155-163; Freeman, 1986:67; International Labour Organisation, 1989a:115; Lewin *et al*, 1988:325; Miewald in Shafritz, 1975:38)⁵ Other legal causes of labour conflict include:

- * Inadequate or inappropriate provisions for reviewing existing or incoming legislation;

- * Sanction of the use of police or military in settling labour disputes; and
- * Inequitable labour rights, notably excessive employers' rights and the right of the State to intervene unilaterally in matters pertaining to conditions of employment.

(Morris, 1986:195).

2.1.5 The organisational environment:

The contest of *interests* between employers who determine workplace policies, *inter alia*, labour policies, and employees who need a "sense of control over [their] employment destiny" can cause labour conflict (Lewin *et al*, 1988:29). In particular, the curtailment of trade union rights in an organisation is a major feature in this regard. Furthermore, a "threat" of retrenchment because, for example of improved technology or budgetary constraints, can also cause labour conflict. (Aaron, Najita & Stern, 1988:207; Lewin *et al*, 1988:29; Wissink in Fox, Schwella & Wissink, 1991:198)

2.2 Behavioural factors:

Labour conflict can be caused by a number of behavioural factors. These include, the recalcitrance of the State (as employer) to acknowledge or change the existing *status quo* in terms of labour policies, a strong-arm approach to "dealing" with labour disputes and the reciprocal antagonistic measures undertaken by trade unions in order to achieve their goals. (International Labour Office, 1986:34; International Labour Organisation, 1989a:115; Lewin *et al*, 1988:90; Morris, 1986:198; Wissink in Fox, Schwella & Wissink, 1991:198)⁶

Other behavioural factors contributing to labour conflict in the public sector include:

- * General strike and dispute inexperience by both parties;

- * The desire emulate private sector successes by means of a show of force;⁷
and
 - * A prevailing sense of mistrust between the parties.
- (Lieberman, 1980:26,34; Miewald in Shafritz, 1975:38; Treu *et al*, 1987:11)

2.3 Structural factors:

Labour conflict can be caused by a number of structural factors. In particular, these factors include poor dispute handling or negotiation skills by employers and trade unions, a general shortage of suitable actors for resolving disputes and a wide application of ineffective or inappropriate communications structures within the organisation.

(Lieberman, 1980:26-34; Miewald in Shafritz, 1975:38; Treu *et al*, 1987:11)

2.4 Key trends:

To sum up, the above causes of labour conflict in the public sector can be described in the following manner:

Labour frustration and insecurity: It is suggested that a growing sense of general labour frustration and the "perception of a common external threat" has resulted in a "deep sense of collective grievance". (Hays & Kearney, 1983:196, International Labour Organisation, 1989a:124, Winchester in Treu *et al*, 1987:217)

Disparaging workforce conditions: It is suggested that deteriorating workforce conditions have resulted in a poor employment image which has undermined the notion of the *honour* of working for the State. Factors contributing to employee dissatisfaction include real-term decreases in pay levels, mercurial government intervention in labour policies and a broad sense of disenchantment with the lack of a work-effort appreciation.

(Hays & Kearney, 1983; Hyman, 1975:154; International Labour Organisation, 1989a;

Sing & Bendix, 1993:68)

Proscriptive legislation: It is suggested that the application of proscriptive legislation has limited the role of labour in determining and regulating policies applied for its own welfare. (Hays & Kearney, 1983; International Labour Organisation, 1989a:121-124)

Bureaucratised labour relations frameworks: It is suggested that complex and time-consuming procedures have frustrated negotiations and dispute settlement processes as well as heightening the levels of trade union distrust towards employers. (Hays & Kearney, 1983; International Labour Organisation, 1989a:120-122)

State and employer recalcitrance: It is suggested that the continued refusal of the State to accept fundamental labour rights and related trade union demands has been characterised by the adoption of various *strong-arm tactics* by the State and employers in order to safeguard the *status quo*. (Hays & Kearney, 1983:196; Hyman, 1975:183; International Labour Office, 1986:71)

Trade union politicisation: Freeman (1986:52) and the International Labour Organisation (1989a:124-125) suggest, as previously noted, that the politicisation of public sector trade unions can be attributed to an inherent imbalance of powers of the labour relationship.⁸ This trend is based on the trade union notion that an inextricable link exists between the socio-economic goals and the political interests of public sector trade union.⁹ Specific goals include raising the "demand for public services"¹⁰ and securing suitable compensation packages for fellow members.¹¹

3. Categories of labour disputes:

As noted in Chapter Three, labour disputes can be distinguished according to *disputes of right* and *disputes of interest*. In the public sector however, these definitions vary (Treu et

al, 1987:29). In general, *disputes of right* are referred to third party arbitration (with the right to strike usually prohibited), and *disputes of interest* settled by collective bargaining, conciliation or mediation. However, failing a settlement in the latter instance, arbitration or fact-finding can be applied. In the case of essential services, third party adjudication by means of arbitration is usually applied. (International Labour Organisation, 1989a:123; International Labour Organisation in Boshoff & Bendix, 1993:40; Morris, 1986:180; Pankert, 1980:723; Treu *et al*, 1987:30-33; Weiler, 1980:232)

4. Processes of labour dispute resolution and settlement:

Labour dispute resolution will be described in context of the following processes:

- * Power driven processes;
- * Processes of right; and
- * Processes of interest.

4.1 Power driven processes:

A key power driven process in the public sector is industrial action.

4.1.1 Industrial action in the public sector:

The following features of industrial action in the public sector will be described:

- * Causes of industrial action;
- * Characteristics of industrial action; and
- * Measures applied for regulating industrial action.

4.1.2.1 Causes of industrial action:

Strikes in the public sector have increased internationally since the 1960's. Factors contributing to this trend include:

- * The expansion of the public sector;
- * The rapid development of trade unions;
- * The significant rise in trade union membership; and
- * The institution of collective bargaining in many public sector organisations.

(International Labour Office, 1986:69; Pillay & Bendix, 1993:46; Treu *et al*, 1987:7-22; Wissink in Fox, Schwella & Wissink, 1991:199).

Key strike triggers have predominantly involved the issues of wages and labour rights (an aspect which involves the issue of comparative legal systems)¹² (Treu *et al*, 1987:21).

4.1.2.2 Characteristics of industrial action:

Industrial action in the public sector internationally, can be characterised by its political disposition, short duration and the large number of participants involved¹³. The latter feature includes the use of nationally coordinated and selective strike action. Industrial action has also been characterised by its frequent adoption by "minority members" of trade unions with strong workplace organisation. (Freeman, 1986:43; Treu *et al*, 1987:211)

Target constituencies against whom strikes are aimed, vary between "first"¹⁴ and "third-world"¹⁵ countries. In the former States, disputes are usually associated with direct disagreement between trade unions and individual employers. In the latter States, industrial action is often characterised as a show of force against an incumbent government. (Freeman, 1986:43-66; Weiler, 1980:220; Wood, 1987:54)

4.1.2.3 Measures applied for regulating industrial action:

As noted in the previous chapter, industrial action can be either sanctioned without restriction, sanctioned with certain limitations or proscribed completely (Morris, 1986:10). Subsequently, the occurrence of industrial action can be regulated by a variety of measures founded on one of the above approaches. In general, a common measure adopted by most States involves the narrowing down of factors to those being acceptable (i.e. a "legal" strike") and those unacceptable (i.e. an "illegal" strike) even in countries proscribing its incidence¹⁶. This approach adopted by States prohibiting the right to strike, can be ascribed to the notion that "an all-out strike causes less inconvenience to the public than more selective action" (Thomas, 1989:143). (International Labour Organisation, 1989a:121-122)

However, in regulating industrial action in the public sector a number of mechanisms or measures can be applied, namely:

- * The use of criminal or civil law;
- * The application of penal restrictions;
- * The negotiation of *no strike* agreements; and
- * *Self-restraint/Joint Regulation* schemes.

4.1.3.3.1 Criminal and civil law:

The application of civil or criminal involves either the removal of statutory immunities which protect the right to strike or the creation of "statutory wrongs which the immunities do not protect" (Morris, 1986:195). Either system can be applied in the event of a breakdown in procedural matters or relations between the parties. The choice between applying civil or criminal law however depends on the severity of expected punishment. For example, civil law procedure is usually applied in the case of fines, while criminal law procedures could be adopted in the instance of arrests having to be

made (Morris, 1986:196). In terms of their comparative usage, Morris (in Boshoff & Bendix, 1993:34) proposes that civil law enjoys two relative advantages over criminal law:

- * That it reduces the political and administrative problems raised in the mass prosecution of strikers; and
- * That it allows government to remain outside the dispute, unless the law fails to resolve the issue.

However, as in the case of the United Kingdom, the adoption of either civil or criminal procedures has become objectionable (Pillay & Bendix, 1993:46). Reasons for this include:

- * Their conspicuous nature of making industrial action a punishable crime and the incapacity of the State to protect the public from strife despite such formal measures;
 - * In the case of *criminal law*: the potential political and administrative costs and the displacement of the role of government from regulator to that of disciplinarian; and
 - * In the case of *civil law*: The possibility of sympathy strikes, removal of the political accountability of the State, and the added complexity of constructing an equitable dispute resolution system.
- (Morris, 1986:196-205)

4.1.3.3.2 Penal restrictions:

The application of penal restrictions includes measures such as fines, imprisonment, dismissal, and mass prosecution in regulating strikes (Morris, 1986:191). However, this measure is a highly contentious issue. On the one hand, findings such as those made by Ichniowski during the mid-1980's on the United States police-force concluded that the use of strike penalties were effective in deterring strike occurrence (Aaron, Najita, &

Stern, 1988:166). On the other hand, it is proposed by others that penal sanctions lead to further labour instability, in particular, by jeopardising the principle of the *freedom of association* (Ben-Israel, 1988:124). Other criticisms include:

- * That fines are often only a slight deterrent and usually ineffective in enforcing compliance;
- * That imprisonment is a bureaucratic and political nightmare, while leaving services unattended;
- * That dismissal can lead to skill and replacement problems compounded by the union blacklisting of vacant jobs; and
- * That mass prosecution can be lengthy, expensive and induce bitter feelings in the workplace.

(Morris, 1986:191)

The application of such measures therefore usually depends on the gravity of the situation, such as for instance, industrial action directly threatening the lives and welfare of the community (Ben-Israel, 1988:126). However, in some States, such as Nigeria where strikes are banned outright, contraventions in terms of labour disputes are frequently are "met with stiff penalties, such as indefinite imprisonment of union officials and proscription of the union for a minimum of period of six months" (Pillay & Bendix, 1993:53).

4.1.3.3.3 The no-strike agreement:

The *no strike* agreement between employers and trade unions is viewed as a key measure for preventing industrial action¹⁷ (Morris, 1986:227). In particular, the popularity of this approach is attributed to the responsibility it places on the State to secure "equitable arrangements for determining work conditions and wages" (Morris, 1986:199). However, a number of factors can undermine the usefulness of this measure. These include:

- * An unexpected change in leadership;
- * New or changing environmental circumstances;
- * Unscrupulous employer behaviour; and
- * The problematic nature of legally enforcing a *non-binding* agreement (Morris, 1986:200).

Subsequently, it can be seen that the *no strike* agreement is vulnerable to exploitation by its lack of enforcement. According to Morris (1986:200) therefore, This makes such an approach "likely to remain in the realms of theoretical discussion".

4.1.3.3.4 The Self-restraint or Joint Regulation approach:

Both approaches involve a mutual restraint of *confrontational tactics* by the State and trade unions, in order to provide a fair means for settling disputes (Morris, 1986:201). In the event of a strike, such agreements often include arrangements for the continued payment of striking workers on the basis that *emergency services* can be continued. This measure includes the recognition that certain services would not be provided during the dispute and that scab labour would be forbidden (Morris, 1986:201).

In addition, the *Joint Regulation* approach involves a clear "articulation of the scope of permissible action" allowed to both the trade unions and employers in the event of a dispute (i.e. industrial action) (Morris, 1986:202). Subsequently, an arrangement is usually made, whereby both parties establish a joint forum for regulating such an agreement (Morris, 1986:204).

However, a key problem is the possibility of trade unions striking without recourse to prior arrangements, thereby leaving employers vulnerable to the effects of such a strike. Consequently, a key element of the *Joint Regulation* approach is the acceptance by both parties that a degree of flexibility and informality must exist as a buffer for potential

conflict (Morris, 1986:202-204). According to Morris (1986:206) therefore, the proposed advantage of this approach lies in its inexpensive and democratic manner.

4.1.3.3.5 The Graduated Strike approach:

The *Graduated Strike* or *Non-stoppage Strike* involves a step-by step approach where *pressure* is gradually applied on both parties in dispute to reach a settlement. This process is based on the withdrawal of a percentage of both parties incomes under the auspices of a *neutral* third party¹⁸. The purpose of this measure is to force parties to settle at the earliest (cheapest!) possible moment. In the case of collected funds, such moneys can be used to compensate the public for the disruption of services or other socially-beneficial projects. (Bernstein in Siegel & Myrtle, 1985:379; Lewin *et al*, 1988:340,419; Weiler, 1980:242)

4.2 Processes of right:

A key process of right in the public sector is the application of arbitration.

4.2.1 Arbitration:

The following aspects of arbitration will be described:

- * Its application in the public sector; and
- * A critique of its usefulness in this regard.

4.2.1.1 Application in the public sector:

The arbitration mechanism is widely applied in the public sector. In many States, the adoption of compulsory arbitration usually displaces the right to strike by means of an

anti-strike clause¹⁹ (Freeman, 1986:67). This practice is founded on the notion that arbitration is a less costly alternative to the strike option and that this mechanism does not deter the voluntary process of negotiations. Findings in the United States of America have lent credence to this notion by proposing that a correlation exists between the application of arbitration and a decline in strike incidence during negotiations. (Aaron, Najita & Stern, 1988:188; Pillay & Bendix, 1993:54; Stern & Olson in Freeman, 1986:67,70)

Compulsory arbitration in the public sector is applied to disputes of right. However both compulsory arbitration and interest arbitration can be applied for settling disputes of interest. The arbitration process usually involves the adoption of either *final-offer* or *pendulum* arbitration. The latter form, or an *issue-by-issue* approach, is a more popular form of arbitration in the public sector. (International Labour Organisation, 1989a:123-124; Lewin *et al*, 1988:340-413; Treu *et al*, 1987:233; Weiler, 1980:232-245)

Interest arbitration is often applied as a *voluntary* mechanism for dispute settlement in the public sector and is usually restricted to *non-essential* services.²⁰ In some States the interest arbitration option includes a conditional right to strike during negotiations. (International Labour Organisation, 1989a:123-124; Lewin *et al*, 1988:340,413; Weiler, 1980:229-232)

4.2.1.2 Critique:

Criticisms of arbitration will be described in the following manner:

- * The States' concerns with arbitration;
- * The employers' concerns with arbitration;
- * The trade unions concerns with arbitration;
- * Other concerns with arbitration; and

- * Some counter arguments in support of arbitration.

4.2.1.2.1 The States' concern with arbitration:

For the State, arbitration can undermine State sovereignty thereby jeopardising the *interests* of the public (Lewin *et al*, 1988:414). In particular, this threat involves a potential demand for the redistribution of government resources, a change in managerial authority, an increase in taxes, a change in the types and quality of service provided, the removal of responsibility from relevant government executives and legislators and, in the most extreme circumstances, lead to a demand for a new representative government (Howlett in Aaron, Najita & Stern, 1988:209). Subsequently, these concerns have, in some instances, led to efforts by the State to prohibit the use of the arbitration mechanism for dispute settlement in the public sector (International Labour Organisation, 1989a:123-124).

4.2.1.2.2 The employers' concern with arbitration:

At the organisational level, employers contend that the use of arbitration can undermine managerial *control*. This notion is founded on the perception that arbitration favours labour rather than employer interests due to the monopolistic nature of government services which provide trade unions with an opportunity to mount formidable pressure on employers.²¹

(Lewin *et al*, 1988:414-416; Weiler, 1980:231)

4.2.1.2.3 The trade unions' concern with arbitration:

However, arbitration can also lead to a loss of control in the dispute resolution process according to trade unions, as a result of displacing the *right to strike*. Subsequently, this factor raises concern over the possibility of undue governmental bias during the process. In particular, these concerns include the selection of arbitrators by the State and, in

some instances, the accusation that the State assists employers in adopting delaying tactics. (Aaron, Najita & Stern, 1988:206; Treu *et al*, 1987:234)

4.2.1.2.4 Other concerns with arbitration:

A key criticism of arbitration is the growing dependence of parties on this process. Coined the *chilling effect* or *narcotic effect*, this process results in an exaggeration of trade union demands as well as minimal employer counter-proposals. This trend can be attributed to:

- * The predictability of award outcomes due to the parties exposure to a particular arbitrator or the practice of "splitting" award outcomes;²²
- * The opportunity to "save face" by blaming poor outcomes on the arbitrator;²³
- * The relative inexpense of the process financially (despite the reverse claim by trade unions as noted above); and
- * The potential for better award outcomes where parties have poor negotiating experience.

(Aaron, Najita & Stern, 1988:206; Cameron, Cheadle & Thompson, 1989:70; Freeman, 1986:74; Weiler, 1980:230-231)

Subsequently, it is contended that arbitration undermines the integrative nature of the labour relationship (Farber & Bazerman, 1989:100-102; Kochan in Farber & Bazerman, 1987:347; Flanagan, 1990:314; Freeman, 1986:71). However, researchers such as Chelius and Extejt (in Lewin *et al*, 1988:343), suggest that the *chilling* or *narcotic effect* is usually short-lived because of the variability of conditions over time.²⁴

To sum up, arbitration is also criticised for the following reasons:

- * The high costs of performing arbitration;

- * The general increase in the number of impasses during negotiations, where arbitration follows;²⁵
 - * The problem of inexperienced or biased arbitrators; and
 - * The similarity between fact-finding and arbitration.
- (Aaron, Najita & Stern, 1988:206; Benjamin, 1989:46; Flanagan, 1990:313; Freeman, 1986:70-3; Lewin *et al*, 1988:79,342; Nyembe, 1992:44; Treu *et al*, 1987:31; Weiler, 1980:228)

4.2.1.2.5 Some counter-arguments justifying arbitration:

With regard to the justification for State sovereignty, it is contended that political systems invariably include a variety of other pressure groups, such as private sector trade unions, which influence the formulation of labour policy. Similarly, the notion that employers and trade unions lose control during such a process is countered by the arguments that such parties rather than lose control over the bargaining process, retain their powers by means of the fair (or authoritative) and private manner in which arbitration is conducted. (Lewin *et al*, 1988:414-419) In particular, factors which support the above notions include:

- * Findings in the public sector which indicate that a negligible level of arbitrator bias influences arbitration; and
 - * That differences between the negotiation process and arbitration were minimal, with a general preference for the former process *on the basis* that arbitration could be followed if disagreement continued.
- (Freeman, 1986:43; Lewin *et al*, 1988:79)

4.3 Processes of interest:

The following key processes of interest are applied in the public sector:

- * Collective bargaining; and
- * Conciliation and Mediation.

4.3.1 Collective bargaining:

The following aspects of collective bargaining will be described:

- * Characteristics of public sector bargaining;
- * Collective bargaining structure; and
- * The alternative of *Joint Consultation*.

4.3.1.1 Characteristics of public sector collective bargaining:

Collective bargaining in the public sector is broadly characterised by "complexity, [a] lack of clarity, and change" (Heneman & Schwab, 1978:271). Therefore, unlike the private public sector collective bargaining often incorporates elaborate time-consuming measures and a variety of third party mechanisms to prevent a breakdown.²⁶ Bargaining legislation in the public sector is usually unique and industry specific depending on the level it is applied (Lieberman, 1980:95-97; Stieber, 1986:5-6; Treu *et al*, 1987; Weiler, 1980:214).²⁷ Collective bargaining is usually banned in "essential services" and sometimes temporarily during periods of necessitated State intervention in the economy (Treu *et al*, 1987).

Collective bargaining can be applied on a regular basis or intermittently as conditions dictate. In some States, such as Belgium, collective bargaining is applied specifically during periods of political transition in order to renegotiate standing arrangements with

the newly elected government (International Labour Organisation, 1989a:116).

4.3.1.2 Collective bargaining structure:

The following features of the collective bargaining structure in the public sector will be described:

- * Bargaining representation;
- * Bargaining scope; and
- * Bargaining levels.

4.3.1.2.1 Bargaining representation:

Public sector trade union representation in the collective bargaining process can involve *bilateral* negotiations (i.e. one-on-one bargaining) or *multi-lateral* or *end-run bargaining* (i.e. where several parties participate).

The recent growth of trade unionism in the public sector has led to growing trade union pressure for better (wider) representation in the bargaining process. These demands can be ascribed to a desire for improved fundamental labour rights and the protection of key interests, such as wages. (Freeman, 1986:51-52)

4.3.1.2.2 Bargaining scope:

Bargaining scope is contingent on the *sovereign prerogative* of the State, whereby activities or issues determined to be counterproductive to the public interest are prohibited from the bargaining process. However, according to Hays & Kearney (1983:326), this prerogative is criticised on the grounds that it prevents "public knowledge of the issues" which can help to "hold public officials accountable for their bargaining decisions and solidify public opinion in impasse situations". (Freeman, 1986:52; Weiler, 1980:215-217)

4.3.1.2.3 Bargaining levels:

Two broad approaches to collective bargaining have emerged in the public sector, namely: a *decentralised* or *organisational bargaining* and a *mixed* bargaining framework.

It is suggested that the *decentralised* bargaining approach is the most popular framework in the public sector. With reference to local government, States adopting this approach include Canada, Japan and the United States of America. Key reasons for this framework include the need to address specific organisational issues (particularly those of a social and financial nature) and the desire to limit any undue political influences in the bargaining process.²⁸ (International Labour Organisation, 1989a:118-119; Lewin *et al*, 1988:123; Knowles, 1988:227-228)

The *mixed* bargaining approach involves the use of both *central* and *organisational* level bargaining. Its chief characteristic is the division of bargaining topics according to the level at which they ought to be negotiated. In the United Kingdom for example, pay and salary structures are determined by means of national settlements and "conditions of work and other elements in the pay-productivity bargain" at the organisational level²⁹ (Winchester in Treu *et al*, 1987:229). However, a key issue in this approach is the *legitimacy* of conflicting agreements arising out of separate agreements at both levels. (International Labour Organisation, 1989a:118-119; Knowles, 1988:227-228)

4.3.1.3 The use of Joint Consultation:

Joint Consultation is a popular option to collective bargaining in the public sector. This approach involves a process of *consultation* rather than *negotiation* between employers and trade unions. The purpose of *Joint Consultation* is to accentuate "the co-operative rather than the adversary elements of labour-management relations" (Adams, 1992:80). Notably however, unlike collective bargaining, employers retain the ultimate right to

determine the outcome of issues. (Adams, 1992:80)

Internationally, the practice of Joint Consultation varies. In the Netherlands for instance, public sector Joint Consultation is practised at the central level by means of a council representative of government and four employee federations. In Germany Joint Consultation is restricted to *beamte* (i.e. employees with a statutory employment relationship) and government officials only. Similarly, these restrictions apply in Japan, but with the further *proviso* that all recommendations are submitted to an independent body³⁰ in order to determine final pay and work conditions. (International Labour Organisation, 1989a:118-119)

In some States however, both Joint Consultation and collective bargaining are applied in tandem. In Spain for instance, macro economic issues are collectively bargained for while "recruitment plans, job classification and promotion systems; matters involving legislation or increased budgetary provision" are subject to Joint Consultation (International Labour Organisation, 1989a:119). Reasons for this approach are primarily attributed to the need to coordinate both bargaining and budgeting requirements on the basis of a *best possible outcome* for all.³¹ (International Labour Organisation, 1989a:118-119; Knowles, 1988:227; Treu *et al*, 1987)

However, the above arrangement is also criticised for the lack of a clear distinction between both processes. For example, during Joint Consultation, trade unions which may oppose the employers' views can convince employers to compromise in order to avoid potential strife. This possibility, therefore begs the question: Does *negotiation* rather than *consultation* take place during the Joint Consultation process? (Adams, 1992:80)

In some cases, Joint Consultation is also resented by trade unions on the basis that this process entrenches the *sovereignty of the government* by displacing other fundamental labour rights (Adams, 1992:80; International Labour Organisation, 1989a:118-119).

4.3.2 Mediation and Conciliation:

Both mechanisms are commonly applied together in the public sector. Therefore, the following aspects of both mechanisms will be described:

- * Their application, and
- * a critique of the above.

4.3.2.1 Application:

Conciliation and mediation are usually applied interchangeably for settling disputes in the public sector. A distinction can be made between developed countries, where these mechanisms are regularly used for settling disputes, and the developing countries, where they are hardly applied.³² (Ben-Israel, 1988:104; International Labour Office, 1986:72; International Labour Organisation, 1989a:120-123)

4.3.2.2 Critique:

No specific method for evaluating the usefulness of conciliation and mediation exists³³. However, factors which can help determine the viability of these processes include:

- * The personal integrity and "style or philosophy"³⁴ of the mediator or conciliator;
 - * The intensity of the conflict, and the extent to which inter-personal hostility is prevalent, in the process;
 - * The parties' commitment to this process;
 - * The acceptability of the mediator or conciliator;
 - * The strategic implications of a request for this mechanism; and
 - * The timing of entry by parties in dispute.³⁵
- (Bendix, 1989:210-211; Lewin *et al*, 1988:335-336; Subbarao, 1988:122)

Both processes can be useful where parties are relatively inexperienced in negotiations (Bendix, 1989:208-210).³⁶

4.4 Other dispute resolution and settlement mechanisms:

A commonly applied dispute settlement process in the public sector internationally is fact-finding.

4.4.1 Fact finding:

Fact-finding or *advisory arbitration* is usually applied after a failure of the conciliatory or mediatory mechanisms to settle disputes in the public sector. This mechanism is viewed as an alternative form of arbitration. In the public sector, fact-finding is seen as a useful mechanism for clarifying key "facts" and applying public pressure, in the form of "public opinion", on disputing parties for a settlement (Treu *et al*, 1987:31). As with arbitration, fact-finding usually replaces the right to strike although this depends on the prevailing circumstances of a dispute and statutory practice in this regard. An example of a fact-finding approach can be the use of *indexation* during wage disputes. This process provides a comparative perspective of pay levels in other industries or sectors where workers are not subject to strike limitations. Subsequently *indexation* could provide the basis for a settlement of this nature. (International Labour Organisation in Boshoff & Bendix, 1993:41; Morris, 1986:194)

5. Approaches to labour dispute settlement:

Approaches to dispute settlement in the public sector can be summed up in the following terms:

- * Whether or not a right to strike is sanctioned;
- * Whether services are deemed "essential" or non-essential;

- * The degree of State assistance to the process; and
- * The preference for statutory or voluntary processes and the nature of disputes themselves.

(International Labour Organisation in Boshoff & Bendix, 1993:40; Pankert, 1980:723)

In general however, two broad approaches to dispute settlement in the public sector commonly occur in practice. These approaches can be distinguished between countries whose dispute settlement objective it is to determine a satisfactory outcome to parties in dispute (i.e. *participation*) and those States who aim to protect community interest (i.e. *unilateralism*). (Pankert, 1980:733),

The *unilateralist* approach is characterised by prohibitions against the *right to strike* and *lock-out* and the application of *compulsory arbitration* as the key mechanism for dispute settlement. Examples of the *unilateralist* approach, include many developing countries where a key trend has been the adoption of restrictive dispute settlement systems for the public service.

(Pankert, 1980:733-736; Treu *et al*, 1987:27-36)

The *participative* approach involves the adoption of *ad hoc* or *procedural* approaches for settling disputes which sanction the use of *voluntary* procedures. These include *collective bargaining* and other forms of third party facilitation during the negotiation process.

However, in most States, for example Massachusetts in the United States of America,³⁷ exception is made to essential services where stricter measures are applied.³⁸ (Heneman & Schwab, 1978:275; Pankert, 1980:725-733; Treu *et al*, 1987:27-36)

Subsequently, a number of further characteristics distinguish the above approaches.

5.1 Characteristics of labour dispute settlement:

To sum up, the dispute settlement process in the public sector can be characterised by:

- * The political sensitivities of the parties in dispute;
- * The more detailed regulation of practices;
- * The wider adoption of alternative dispute settlement methods; and
- * The stricter regulation and sometimes prohibition of open conflict.

(Treu *et al*, 1987:43)

5.2 Dispute settlement trends in the public sector:

Key developments in dispute settlement systems can be summed up by the following approaches:

- * The desire to settle labour disputes at their *source of origin*;
- * The preference for a limited State role in labour disputes;³⁹
- * The growing usage of *voluntary* measures by allowing parties in dispute to determine their own mechanisms for dispute settlement;⁴⁰ and
- * The preference for *independent* third party assistance⁴¹ in the case of continued disagreement, rather than *State-sponsored* machinery.

(International Labour Organisation, 1989a:123; Morris, 1986:180; Treu *et al*, 1987:30-33,230; Weiler, 1980:232)

5.3 Key issues in public sector dispute settlement:

Key dispute settlement issues in the public sector can be summed up as follows:

- * Excessive State intervention;⁴²

- * The viability of *codes of conduct* where no formal measures are applied;
- * Sophisticated dispute settlement procedures and the lack of relevant management and trade union expertise in this regard;
- * Time constraints where, unlike the private sector, no opportunity is given to "personal and emotional differences" due to public pressure and time requisites; and
- * Unfair tactics by parties to derail the dispute settlement process. For example, preferential government policies towards certain trade unions. (International Labour Organisation, 1989a:120; Morris, 1986:180; Treu *et al*, 1987:232-237; Weiler, 1980:242)

6. Overview:

This chapter outlined a background to key features and trends of labour disputes and their settlement in the public sector. Notably:

- * The environmental, behavioural and structural causes of labour conflict;
- * The interpretation of labour dispute categories, namely *disputes of interest* and *disputes of right*;
- * The use of power driven processes (industrial action), processes of right (arbitration) and processes of interest (collective bargaining, mediation and conciliation) for resolving and settling labour disputes; and
- * Finally, the characteristics, trends and a number of key labour issues concerning dispute settlement.

CHAPTER SIX

LABOUR RELATIONS IN SOUTH AFRICAN LOCAL AUTHORITIES

1. Introduction:

This chapter outlines the nature of labour relations in South African local authorities. In particular, the following aspects will be described:

- * A background to the concept and role of local authorities;
- * A background to labour relations practices in local authorities;
- * The parties to the labour relationship; and
- * The manner in which labour relations are conducted.

2. A background to Local Authorities in South Africa:

The following background to local authorities is described:

- * The concept and a definition of *Local Government*;
- * The characteristics of local government;
- * The types of local government in South Africa;
- * The purpose of local authorities in South Africa;
- * The duties of local government;
- * The environments shaping local government duties; and
- * The location of local authorities in the public sector.

2.1 The concept and a definition of *Local Government*:

Since ancient Greek times local government has broadly meant to *steer* or *govern* (Hammond-Tooke, 1977:3). However, this concept has been obscured by a variety of historical, political, cultural, educational, geographical and demographic forces (Hanekom in Heymans & Tötemeyer, 1988:15). Subsequently, no universal definition of local government is applied (Conyers, 1984:187). In general however, local government can be described as "the government of cities, villages, boroughs, towns and other organised communities" or as a "particular tier of government" (Coetzee, 1985:26-27). Examples of both approaches will be briefly illustrated.

In terms of the former description, Meyer (in Heymans & Tötemeyer, 1988:13), depicts local government as comprising a number of *local democratic units* which are "vested with forescribed, controlled governmental powers and sources of income to render specific local services and to develop, control and regulate the geographic, social and economic development of defined local areas" (Meyer in Heymans & Tötemeyer, 1988:13). Similarly, Coetzee (1985:27) describes local government as "the action of governing the affairs of a town or city by directing, controlling and regulating people, business and industrial activities within its jurisdiction".

On the other hand, in terms of the latter approach, Lockhard (1968:451) describes local government as "a public organisation authorised to decide and administer a limited range of public policies within a relatively small territory which is a *subdivision* (own *italics*) of a regional or national government". For the purposes of this thesis, the following definition of local government applies:

"a decentralised representative institution with general and specific powers devolved on it in respect of an identified restricted geographical area within a state" (Heymans & Tötemeyer, 1988:2).

2.2 Characteristics of local government:

Local government is usually described by the terms *municipality*, *council* and *local authority*. *Municipal government* is a form of *universitas*. According to Donges & Van Winsen (in Craythorne, 1982:21), *universitas* is a group process in which a "new subject of rights and duties separate and distinct from the rights and duties of the individual persons who constitute the group" is determined. Subsequently, local government connotes a formal *legislative body* (Coetzee, 1985:26).

As noted previously, a key feature of local government is its relative subordination to central government policy and second tier pressures (Lockhard, 1968:451). Subsequently, the nature of intergovernmental relations¹ influences the capacity of local government to represent, and look after the interests of the community within its jurisdiction (Heymans & Töttemeyer, 1988:2; Mawhood, 1983:n.p.)². In particular, these relations are based on the concept of *decentralisation*³, where power is distributed "horizontally rather than "vertically" (Heymans & Töttemeyer, 1988:2-5)⁴. To sum up, local authorities can be characterised by:

- * Their corporate nature⁵;
- * Their defined powers for a range of services; and
- * Their representation, usually by elected members.

(Craythorne, 1982:21; Heymans & Töttemeyer, 1988:13)⁶

South African local authorities can therefore be described as legally independent entities which operate within defined communities (depending on the communities size) or jurisdictions (Hanekom in Heymans & Töttemeyer, 1988:13). Their status is usually determined by the size of the community they serve and the revenue they derive from their jurisdictional areas for services rendered⁷ (Craythorne, 1982:21; Heymans & Töttemeyer, 1988:13).

2.3 Types of local government in South Africa:

A variety of local government organisations function in South Africa⁸, namely:

- * *City Councils:* City Councils function in all the provinces of South Africa, are white-elected, and are nominally called *boroughs* in the province of Natal;
- * *Town Councils:* Town Councils function in all the provinces of South Africa and are almost identical to City Councils;
- * *Town Boards:* Town Boards function in the provinces of Natal and Transvaal, in townships outside the City Councils or Boroughs. Public functionaries are elected by "whites" or appointed by an administrator. Town Boards render selected basic services such as roads, waterworks and drainage;
- * *Village Councils/ Village Management Boards:* Village Councils function in the Orange Free State and Cape Province and are granted limited municipal powers;
- * *Local Boards;* Local Boards function in the Orange Free State and the Transvaal. Public functionaries are elected or appointed by the Administrator for the province and have almost the same functions as office-bearers of a municipality;
- * *Health Committees:* Health Committees function in the provinces of Natal and the Transvaal. In Natal, Health Committees render selected services such as the maintenance of streets, waterworks, drainage, control of

nuisances and buildings; and

- * *Regional Services Councils:* Regional Services Councils function in all the provinces of South Africa. They render a number of specified municipal services on a regional basis as defined by the Regional Services Councils Act (Act 109 of 1985).

(Cloete, 1988:19,243; Craythorne, 1982:20)

For the purposes of this thesis, the term *local authorities* shall refer to all the above forms of local government.

2.4 The purpose of local authorities in South Africa:

Local government grants citizens within its jurisdiction "the opportunity to provide for matters that are of a local nature and that affect their everyday lives" (Sing & Penceliah, 1989:49). In order to ensure that its institution is beneficial to the community it serves, two broad objectives prevail, namely:

- * Serving people within its jurisdiction as efficiently and effectively as possible; and
- * Ensuring that the maximum number of inhabitants participate in the decision-making process (directly or indirectly) of the local authority.

(Cloete, 1978:233; Hanekom in Heymans & Tötemeyer, 1988:14).

In fulfilling these goals, a number of duties can be undertaken. These will be described below.

2.5 The duties of local authorities:

As noted above, the range of services provided is contingent upon the capacity or size of the relevant local authority, available resources and expertise and the perceived needs of the inhabitants (Hanekom in Heymans & Tötemeyer, 1988:15). Examples of services provided at the municipal level include:

- * Streets, pavements and storm-water drainage
- * Cemeteries and crematoria
- * Parks and playgrounds
- * Water
- * Electricity
- * Abattoirs
- * Rubbish and night-soil disposal
- * Health
- * Environmental protection
- * Community development, housing and slum clearance
- * Town and city planning
- * Licences
- * Passenger transport
- * Libraries and other amenities.

(Cloete, 1986:55-65; Cloete 1988:254)

In performing the above duties, local government must function within a number of unique environments. These environments will be briefly described.

2.6 The environment's shaping local authority duties:

The environment within which local government must function can be distinguished by:

- * The physical conditions;
- * The social expectations;
- * The economic demands;
- * The political values; and
- * Administrative delegation and regulation.

2.6.1 Physical conditions:

All local authorities need to assess the physical infrastructure in their area. This is in order to plan and maintain new and existing structures for the development of such an area. (Coetzee, 1985:29)

2.6.2 Social expectations:

This involves accounting for and responding to the needs of the populace. In particular local authorities aim to improve upon and secure existing living standards. (Coetzee, 1985:31)

2.6.3 Economic demands:

Local government is expected to respond effectively to the financial and resource constraints imposed upon it. This involves planning for such demands by means of establishing a clear budget of existing expenditures and projects. (Coetzee, 1985:32)

2.6.4 Political values:

Local government is a political institution (Craythorne, 1990:12; Sing & Penceliah, 1989:49). Consequently, these organisations are expected to fulfil the function of the political system by apportioning spiritual and material values in society⁹ (Coetzee, 1985:33; Heymans & Tötemeyer, 1988:10). This is achieved by reflecting the values of

the community it serves in its decision-taking. As Coetzee (1985:33) comments:

"Since politics at the local government level embraces all the activities which have an influence on the manner in which the nature of a community's authoritative policies are determined and executed [the] municipal council has the authority of the whole community behind it to take decisions and to ensure that they are put into effect".

2.6.5 Administrative delegation and regulation:

The scope and delegation of authority at the local government level is embodied by the responsibility of the chief executive officer and departmental heads of each organisations (Coetzee, 1985:35). These responsibilities are accomplishment by means of the "organisational structure adopted, the training given to, and the values inculcated into the municipal staff" (Craythorne, 1990:15). As noted previously, according to Tötemeyer (in Heymans & Tötemeyer, 1988:1,10), decisions are "predominantly politically determined" thereby reflecting the quality and "credibility of government service". Therefore the scope and delegation of responsibility to local authorities is characterised by the kinship between administrative values and performance, and socio-political values.

2.7 The location of local authorities in the public sector:

The concept and composition of the public sector will be described.

2.7.1 The concept of the *public sector*:

The public sector broadly refers to "all those enterprises, departments or institutions which either produce goods or provide services and which are totally or partially owned or controlled by the state" (Golding, 1985:41).

However, it can be noted that a related mis-perception is the assumption that both the *public service* and *public sector* are readily interchangeable concepts (Boshoff & Bendix, 1993:31). This notion is rejected by Kluever (in Levitz, 1990:9) who accuses the media, in particular, for making "sweeping statements about the Public Service [which] include under this definition many bodies such as local authorities". Subsequently, the public service is a distinct sector within the public sector which does not include local authorities within its composition. As Levitz (1990:8) concludes, the *Public Service* constitutes "departments, own affairs administrations and provincial administrations" (now disbanded).

For the purposes of this thesis, unlike previous chapters, local authorities do not fall within the category of the *public service*.

2.7.2 The composition of the public sector:

Public sector organisations function within the financial constraints of an annual budget (Hilliard, 1994:8). The public sector is the largest employer in South Africa with an active workforce of around 1.7 million workers or 16% of overall employment in 1992 (Boshoff & Bendix, 1993:32)¹⁰. The number of employees in local government during 1992 was estimated at 210 837 employees. The composition of the public sector for 1992 comprised:

- * Public Service & Exchequer personnel (59.8%);
 - * *Local Authorities* (16.1%);
 - * Transnet (10.8%);
 - * Public corporations (8.2%);
 - * Posts & Telecommunications (5.9%); and
 - * Agricultural Control Boards (0.2%).
- (The South African Institute of Public Administration, 1992:27)

The above figures are illustrated in **Annexure 6A**.

3. Characteristics of labour relations in South African local authorities:

This background describes the following aspects of labour relations in local authorities:

- * Frame of reference applied in South Africa;
- * Growth of the labour relations function in local authorities; and
- * Nature of labour relations in local authorities.

3.1 Frame of reference applied in South Africa:

Labour relations in South Africa can be described as an amalgam of European and North American traditions (Cameron, Cheadle & Thompson, 1989:9). Historically, employers have functioned in a Unitarist mode which was often characterised as a paternalistic approach to labour relations (Childs, 1987:74;). However, since the 1980's a pluralist approach has become prevalent in South Africa (Childs, 1987:74). Horwitz (1991b:61) describes this trend as a shift from a *win-loose* approach to "an emergent notion of pluralism in the political economy", i.e. a *win-win* approach in labour relations¹¹. A number of factors contributed to this change, in particular:

- * The rapid growth of trade unionism in South Africa; and
- * The subsequent increase in labour representation in the workplace.
(Childs, 1987:74).

However, despite the paradigmatic shift in the broader approach to labour relations, Van Holdt (in Botha, 1990:28) warns that at the organisational level labour relations often reflects an "authoritarian, oppressive and undemocratic" style. The growth and nature of labour relations in South African local authorities follows.

3.2 Growth of the labour relations function:

Historically, personnel management and labour relations practices were hardly applied as generic management function in local authorities. This was broadly ascribed to the following factors:

- * The limited financial resources of local authorities;
 - * General government inexperience with the personnel function¹²;
 - * A prevailing management disregard for methodical investigation¹³; and
 - * The sparse attention given toward labour issues at the time.
- (Cloete, 1978:218)¹⁴.

However, since the early 1980's the labour relations function in local government generally became an integral aspect of personnel management in local authorities. Key factors contributing to this trend included:

- * A growth in the autonomy of local authorities in regulating labour relations practices; and
 - * A growth in the size of trade unionism within their organisations.
- (Sing & Penciliah, 1989:54)

3.3 Nature of labour relations in South African local authorities:

A multiplicity of labour relations arrangements have emerged in South African local authorities¹⁵ (Sing & Penciliah, 1989:54). These arrangements can be distinguished by their relatively independent nature by means of the specific arrangements decided within each local authority, in particular, the nature of relations between the *relevant* parties (Coetzee, 1985:119). The lack of uniformity in labour relations practices can be attributed to a wide variety of influences, namely:

- * The number, level, schooling, diversity and morale of staff;
- * The incidence of labour unrest;
- * The essentiality and vulnerability of services;
- * The geographical distribution of the offices and institutions;
- * The intensity of union activity and negotiations;
- * The incidence of grievances; and
- * The skills and training of line managers and supervisors.

(Sing & Bendix, 1993:73)

Examples of some local authority labour relations arrangements include:

- * *Roodepoort*: Where day-to-day grievances are handled by the Chief Personnel Officer and more "serious industrial relations matters" taken up by the Chief of Personnel Services; and
- * *Port Elizabeth*: Where the duties of the Personnel Officers include: Ensuring the correct completion of properly identified grievances on forms, monitoring all the "facts" collected, prevention of bias, victimisation and unfair labour practices, and advising the rights and responsibilities of all the parties involved in such a dispute; and
- * *Pietermaritzburg, Johannesburg and Durban* which have separate Labour Relations units to deal specifically with issues in more detail in this regard.

(Sing & Penceliah, 1989:54)

4. Parties to the labour relationship:

The labour relationship in local authorities is made up of trade unions, professional associations, employers and employers organisations, and various advisory and regulatory

bodies provided by the State or independent organisations (Sing & Maharaj.1990:45). A description of the above parties follows, namely:

- * The *employers*;
- * The *trade unions*; and
- * The *State*.

4.1 Employers:

The following aspects of the *employers* role in local authorities will be described:

- * A definition of *employers*; and
- * Employer representation in labour relations.

4.1.1 A definition of *employers*:

Local government *employers* represent the local authority and body corporate (Sing & Penceliah, 1989:51). In terms of labour relations, the responsibility of employers is largely undertaken by the personnel officials of each local authority. However, in some instances, elected and appointed public functionaries, including the Town Clerk, can participate directly in certain processes, notably negotiation during industrial action. In general, as noted previously, *employers* are defined by the Labour Relations Act (Act 28 of 1956) [as amended] as:

"Any person (a municipality is a person) whomsoever who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him or who, subject to sub-section (3) permits any person whomsoever in any manner to assist him in carrying on or conducting of his business; and employ and employment have corresponding meanings." (Craythorne, 1990:211)

A notable trend has been the emergence of employer organisations for, *inter alia*, resolving and regulating labour relations disputes in local government (Sing & Maharaj, 1990:43). This feature will be described.

4.1.2 Employer organisations in local authorities:

The following aspects of employer organisations will be described:

- * A definition of *employer organisations*;
- * A background to employer organisations;
- * Current representation of employer organisations; and
- * Objectives of employer organisations.

4.1.2.1 A definition of *employer organisations*:

The Labour Relations Act (Act 28 of 1956) [since amended] defines an *employer organisation* as:

"Any number of employers in any particular undertaking, industry, trade or occupation associated together for the purpose, whether by itself or with other purposes, of regulating relations in that undertaking, industry, trade or occupation between themselves or some of them and their employees or some of their employees."

4.1.2.2 A background to employer organisations in South African local authorities:

The first employers' organisation in South Africa can be traced back to 1890 when the Industrial Union of Employers was founded (Sing & Maharaj, 1990:46). In local government, such an undertaking was attempted in 1917 by the Transvaal Municipal

Association as a result of employee demands for improved salary and service conditions. In 1959 the United Municipal Executive was also organised by employers specifically in order to negotiate with the all "white" South African Association of Municipal Employees (SAAME) (Sing & Maharaj, 1990:46). Both the above employer organisations failed to retain permanent status due to their limited powers and a lack of unity amongst employer members.

However, the first permanent employer organisation was founded in January 1969 and became known as the Transvaal Municipal Employers' Organisation (TMEO). Subsequently, labour relations in local authorities featured the establishment of an industrial council between the TMEO and SAAME, as well as the introduction of an Industrial Court for the Local Government Undertaking in the Province of Transvaal (as approved by the Labour Relations Act (Act 28 of 1956) [as amended] during this period). In 1985 the TMEO became known as the Municipal Employers' Organisation (MEO) and extended its operation to the Orange Free State and Natal. During this time the MEO also became party to the Industrial Council for Municipal Undertaking which by 1988 had resulted in eight Industrial Council divisions. (Sing & Maharaj, 1990:45-47)

4.1.2.3 The current representation of employers' organisations:

A number of local authority employer organisations function presently. In general these organisations can be distinguished by three branches of representation:

- * In Natal, the Orange Free State and the Transvaal, local government undertakings represent the interests of the Association of Chief Administrative Officers for Local Authorities (ACAOLA) and SAAME;
- * In the Cape Province, the Cape Province Local Authorities Employers' Organisation was established and registered in february 1981 under government Notice 51 of 1986; and

- * More recently, the Major Cities Employer's Organisation which was registered in 1988 which represents employers from the Durban, Johannesburg, Cape Town, Port Elizabeth, Pretoria and Bloemfontein local authorities.

(Sing & Maharaj, 1990:47)

To sum up, employers' organisations currently comprise:

- * The *Orange Free State Gold Fields Employers' Organisation*;
- * The *Major Cities Employers' Organisation*;
- * The *Cape Province Local Authorities Employers' Association*; and
- * The *Municipal Employers' Organisation*.

(Sing & Penceliah, 1989:53; Sing & Maharaj, 1990:46)

All the above organisations are members to the *Federation of Municipal Employers' Organisation*, whose duties include, *inter alia*, representing the above member organisations interests on the *Board of Remuneration and Service Benefits of Town Clerks* and whose constitution provides for "structures, collective bargaining roles, internal relationships and external relationships". (Sing & Maharaj, 1990:47)

4.1.2.4 Objectives of employers' organisations in South African local authorities:

To sum up, the objectives of employers' organisations in local authorities involve:

- * Regulating member\employee relations while safeguarding the interests of the employers;
- * Promoting the use of conciliatory dispute settlement processes;

- * Ensuring that any proposed legislation related to labour relations is acceptable to member employers;
 - * Expanding the present membership;
 - * Retaining and developing any liaisons or links with other associations, organisations, business chambers, institutes or authorities, i.e. external relations;
 - * Providing legal assistance, where necessary, for members; and
 - * "Cooperating with organisations of employers and/or employees on any industrial council or conciliation board which may be established to deal with matters affecting members".
- (Sing & Maharaj, 1990:48)

4.2 Trade unions:

The following aspects of *trade unions* in local authorities will be described:

- * A definition of *trade unions* in the South African context; and
- * Trade union representation in labour relations.

4.2.1 A definition of trade unions:

As noted previously, trade unions are defined by the Labour Relations Act (Act 28 of 1956) [as amended] as:

"Any number of employees in any particular undertaking, industry, trade or occupation associated together for the purpose, whether by itself or with other parties, of regulating relations in that undertaking, industry, trade or occupation between themselves (or some of them), and their employers (or some of their employers)."

(Craythorne, 1990:211)

4.2.2 Trade union representation in labour relations:

The following aspects of trade union representation in local authorities will be described:

- * The composition;
- * The membership; and
- * The growth of trade unionism in local authorities.

4.2.2.1 Composition:

Trade unions in local authorities, as elsewhere, act as guardians of the particular interests of their members (Pillay & Bendix, 1993:53). Historical forces have broadly shaped their nature and composition. In particular, until recently, trade unions were racially segregated and it is submitted currently represent these historical compositions. A description of this membership follows.

4.2.2.2 Membership:

Annexure 6B provides a list of all the active local authority trade unions in South Africa.

Currently employees are represented by approximately 34 local government trade unions and professional associations. The two largest representative trade unions are the South African Association of Municipal Employees (SAAME) and the South African Municipal Workers Union (SAMWU). A number of trade unions belong to inter-industry federations or confederations. A brief description of these organisations follows.

Major union groupings on the South African industrial relations scene comprise the Confederation of South African Trade Unions (COSATU), the National Council of Trade Unions (NACTU), the United Workers Union of South Africa (UWUSA) and the South African Congress of Labour (SACOL) (King, 1990:27). Their individual policy

goals can be summarised as:

- * COSATU: Forming a "strategic alliance" with certain political parties, while retaining autonomy;
 - * NACTU: Adopting a "workerist" charter while retaining links with Africanist flags and black consciousness;
 - * UWUSA: Allied to the Inkatha Freedom Party and anti-socialist; and
 - * SACOL (the South African Congress of Labour): Allied with the National Party but steering toward Conservative Party style policies.
- (King, 1991:27)

Notably, a realignment of trade union federations in recent years has resulted in an alliance between the Federation of Salaried Staff (FEDSAL) and the Confederation of Metal and Building Unions (CMBU), to which SAAME is affiliated (its second biggest affiliate). (Horwitz, 1991b:3).

Local government trade unions can be furthermore distinguished by:

- * Those trade unions whose members and interests are remain "localised", i.e. within local government, for example the South African Association of Municipal Employees (SAAME) and the South African Municipal Workers Union (SAMWU); and
 - * Those trade unions which are classified as general trade unions whose activities include other sectors besides that of the local government, for example, the Transport and General Workers Union (TGWU), United Workers Union of South Africa (UWUSA) and the Black Allied Workers Union (BAWU).
- (Sing & Penceliah, 1989:53)

4.2.2.3 The growth of trade unionism in local authorities:

A major feature of public sector trade unionism has been its rapid growth in the past decade (Horwitz, 1991b:14; Wiehahn, 1988:71). This can be illustrated, for example, by public sector trade unions generally being the largest growing membership of COSATU (Andrew Levy & Associates, 1991:4). Subsequently, the growth of trade unions in the public sector, inter alia, local government, can be broadly attributed to the following psycho-social factors:

- * *Economics*: Public sector employees seeing the trade union as a means of achieving a higher wage and better working conditions;
- * *Group strength*: The growing realisation of the effectiveness of group pressure in terms of attaining labour interests;
- * *Social pressure*: A social acceptance within a circle of friends that such a step was essentially promoting ones own prestige within the ranks of employment; and
- * *Socio-political realities*: "In South Africa, where the black population has effectively been excluded from direct political representation, it is hardly surprising that as labour representatives become better trained and experienced, and as the working population in this country becomes better-informed and more aggressive in its demands for a greater voice in decision-making, that the trade union movement will continue to be a logical and powerful vehicle for maintaining pressure in the process of change."

(Fick & Hugh High, 1987:55-56)

4.3 The State:

The nature of relations between the State and local government is a central one. The States role in the labour relationship can be distinguished by the principal control

measures which it applies to local government personnel matters thereby making local authorities "subject to control by the provincial authorities and State departments" (Cloete, 1988:265-266). These measures include various provisions, such as the need for the Administrators or relevant ministers to approve all by-laws regarding personnel matters (Cloete, 1988:266). The States' role in local government labour relations can, furthermore, be broadly distinguished by the following roles:

- * It acts as *legislator* by determining the collective rights and legal basis upon which collective bargaining and dispute settlement procedures are founded;
- * It acts as a *conciliator* by specifying methods for dispute settlement, notably conciliation, arbitration and mediation; and
- * It acts as a *regulator* by indicating, for instance, time limitations for particular dispute settlement processes, or acting in the capacity of advisor or mediator in certain instances.

(Bendix, 1989:72)

5. Conducting the labour relationship:

Two specific aspects of conducting the labour relationship in South African local authorities are described:

- * Applied legislation influencing labour relations; and
- * The key issue of the right to strike.

5.1 Applied legislation:

Until recently, industry-specific legislation for regulating local government personnel management was scant. General provisions for local authority labour relations included:

- * The Workmen's Compensation Act (Act 30 of 1941) for dealing with a loss of workers' earnings as a result of a death or disablement caused by accident at work or a disease contracted at work.
- * The Basic Conditions of Employment Act (Act 3 of 1983) for regulating conditions of employment.
- * The Wage Act (Act 5 of 1957) which is particularly applied where mechanisms for negotiation are necessary for setting minimum wages.
- * The Machinery and Occupational Safety Act (Act 6 of 1983) for protecting the physical safety of employees and promotion of occupational hygiene.

(Craythorne, 1990:xxxiii-xxxiv; Sing & Maharaj, 1990:43; The Official SA Trade Unions Directory and Industrial Relations Handbook, 1989/90)

However, specific legislation which applies to local authority labour relations comprises:

- * The Remuneration of the Town Clerks Act (Act 115 of 1984)
- * The Local Government Training Act (Act 41 of 1985)
- * The Labour Relations Act (Act 28 of 1956)
- * The Public Service Labour Relations Act (Act 102 of 1993)

(Sing & Maharaj, 1990:43)

Each of these Acts will be briefly described.

5.1.1 Remuneration of the Town Clerks Act (Act 115 of 1984):

This Act delineates specific wage ceilings for local government employees by according to the Town Clerk a maximum salary. This provides a benchmark from which salary scales for all personnel are pegged. (Sing & Maharaj, 1990:43)

5.1.2 Local Government Training Act (Act 41 of 1985):

This Act provides the groundwork for personnel training and development, such as courses for administration and/or other practice in local government. (Sing & Maharaj, 1990:43)

5.1.3 Labour Relations Act (Act 28 of 1956):

Formerly referred to as the Industrial Conciliation Act (Act 11 of 1924) and since amended, this legislation extensively regulates labour relations at the local government level (Sing & Penceliah, 1989:55). Subsequent amendments since 1956 have entrenched, for instance, the rights of trade unions whose members partially or wholly work for the state to register, and in this context, the right of existing trade unions or professional associations to object to such registration (Landman, 1991:18). Furthermore, this Act provides dispute handling machinery (conciliation, mediation and arbitration) and defines the concept of *unfair labour practice* (Fick & Hugh High, 1987:131). With specific reference to local government, the purpose of the Labour Relations Act (Act 28 of 1956) [since amended] is to:

- * Prevent and settle disputes between employers and employees;
 - * Regulate terms and conditions of employment by agreement and arbitration;
 - * Provide for the establishment of an Industrial Court.
- (Craythorne, 1990:210)

Despite the above provisions, the Labour Relations Act (Act 28 of 1956) [as amended] has been consistently challenged by public sector unions for their full incorporation into this Act (Horwitz in Business Day, 14/05/1989)¹⁷. This pressure has subsequently, led to the promulgation of the Public Services Labour Relations Act (Act 102 of 1993) in August 1993.

5.1.4 Public Service Labour Relations Act (Act 102 of 1993):

The need for this Act was established during a meeting between the Commission for Administration and a delegation of trade unions and staff associations representing some 300 000 public sector workers (Andrew Levy & Associates, 1991:33). This Act entrenched a number of key labour demands , such as the right to strike for *non-essential* services. However, these provisions are currently disputed on the basis that few services fall within this category of *non-essentiality* (Hilliard, 1994:7). Presently, the application of the Public Services Labour Relations Act (Act 102 of 1993) for local authorities is vague.

A key right, which can be described is the right to strike in South African local authorities.

5.2 The issue of the right to strike:

The right to strike in local government is prohibited by means of section 65 (1) of the Labour Relations Act (Act 28 of 1956) [as amended]. This prohibition is ascribed to the nature of local authorities as *essential services*¹⁸. (Bendix, 1992:545; Benjamin, 1989:45; Brassey *et al*, 1987:104; Cameron, Cheadle & Thompson, 1989:82; Christie, 1992:25; Cloete, 1988:259; Pillay & Bendix, 1993:49; Sing & Maharaj, 1990:44; Wiehahn, 1988:71)

According to the Labour Relations Act (Act 28 of 1956) [as amended] s46(1), *essential services* are listed¹⁹ as follows:

- (a) *any local authority; or*
- (b) *any employer ... who within the area of a local authority provides light, power, sanitation, passenger transportation or a fire extinguishing service; or*
- (c) *any employer to whom the provision of this section has been applied in terms of sub-section (7);*

Furthermore, sub-section (7) provides a blanket clause which allows the Minister of Manpower, at his discretion and on publication of a notice in the Government Gazette, to declare the following activities as *essential services*:

- (i) *the supply, distribution, processing, canning or preserving of any perishable foodstuffs; or*
- (ii) *the supply or distribution of petrol or other fuels for use by local authorities or other employers in connection with the provision of any service referred to in paragraph (b) of sub-section (1)*

(Bendix, 1992:454; Benjamin, 1989:45; Christie, 1992:15; Sing & Bendix, 1993:70)

This prohibition has recently been contested by the Labour Courts. Their findings have challenged the notion that *all* services provided by local authorities are *essential*. This can be illustrated in the case of Town Council of Benoni v. Minister of Labour, cited in Cameron, Cheadle & Thompson in 1989. In this case the Benoni Town Council requested a prohibition of all forms of industrial action in the local authority based on s.46(i) of the Labour relations Act (Act 28 of 1956) [since amended]. However, this attempt was overturned by the Labour Court because of its "far-reaching restriction on the ordinary rights of employers and employees" in the local authority (Cameron, Cheadle & Thompson, 1989:80).

To sum up, the right to strike in South African local authorities is challenged by the following developments:

- * As noted above, the lack of judicial consensus concerning an appropriate *strike* definition;²⁰ and
- * The legitimate sanction of industrial action on some occasions in local authorities²¹ by the industrial court²².

(Cameron, Cheadle & Thompson, 1989:73; Pillay & Bendix, 1993:54).

6. Overview:

This chapter described the nature of labour relations in South African local authorities by:

- * Describing the concept and key features of local government, namely the characteristics, types, purpose, duties, environment and location of local authorities in the public sector;
 - * Describing labour relations practices in local authorities, namely the applied frame of reference, growth and nature of labour relations in local authorities;
 - * Describing the concept and key features of parties to the labour relationship; and
 - * Describing the manner in which labour relations are conducted, namely prescribed legislation and the issue of the right to strike.
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CHAPTER SEVEN

LABOUR DISPUTES AND THEIR SETTLEMENT IN SOUTH AFRICAN LOCAL AUTHORITIES.

1. Introduction:

This chapter outlines a background to labour disputes and their settlement in South African local authorities. In particular, the following aspects are described:

- * The causes of labour conflict in South African local authorities in the context of broader trends;
- * The categories of labour disputes;
- * The processes of labour dispute resolution and settlement, with specific reference to industrial action and collective bargaining structures; and
- * The approaches to labour dispute settlement.

2. Causes of labour conflict in South African local authorities:

A number of factors causing labour conflict in South African local authorities can be distinguished. These factors will be described in the following contexts:

- * Environmental factors;
- * Behavioural factors; and
- * Structural factors.

2.1 Environmental factors:

The nature, source and types of conflict in local authorities have been influenced by a

number of environments. These can be categorised into:

- * The political environment;
- * The social environment;
- * The economic environment;
- * The legislative environment;
- * The organisational environment.

Each environment will be described in context of key labour dispute issues in local authorities.

2.1.1 The political environment:

The politicisation of the trade union movement has been a key issue of labour disputes in local authorities. This issue will be briefly described.

2.1.1.1 The issue of trade union politicisation:

The introduction of race-based policies in South Africa confronted traditionally "black"¹ trade unions (referred to as *independent* trade unions hereafter²) with the dilemma of an "unjust political order" (Thompson in Benjamin, Jacobus & Albertyn, 1988:74). Subsequently, industrial action became a key "weapon against undemocratic government" (Pillay & Bendix, 1993:47; Copelyn, 1991:29, Magwaza in Botha, 1990:31)³. These developments were notable in local authorities where industrial disputes frequently went beyond the confines of "bread and butter issues" to include demands for political "freedom and justice"⁴ which the employers were powerless to address.⁵ (Horwitz, 1991a:68; Institute for Industrial Relations, 1988:43; Municipal and General Workers Union in MacShane *et al.*, 1984:171; Negota, 1991:7; Pillay, 1990:12).

Factors which have contributed to trade union politicisation included:

- * The perceptible shift in the South African political scenario towards transition which sparked political uncertainty⁶ and to which both the employer and employee had to "adapt almost daily to changing circumstances" (Andrew Levy and Associates, 1990/1991:3);
- * The lack of a franchise for "non-whites";
- * The repression of extra-parliamentary opposition, especially in the townships⁷;
- * The application of prejudicial labour policies at both the State and organisational levels;
- * The popular perception by the disenfranchised of trade unions as a key mechanism for political expression⁸; and
- * The lack of a clear distinction of "political demands"⁹.

(Dlamini in Fick & Hugh High, 1987:102; Du Plessis, 1990:63; Heymans & Totemeyer, 1988:3; Horwitz, 1991a:68; Mullins, 1988:4; Institute for Industrial Relations, 1988:40; Wood, 1987:64-65,158-199).

2.1.2 The social environment:

A variety of discriminatory labour practices and the growing acceptance of *violence* as a method for resolving workplace issues have been key issues of labour disputes in local authorities. These will be briefly described.

2.1.2.1 The issue of workplace discrimination:

South African labour relations have been "infinitely aggravated" by racial prejudice and tensions at all levels of society. In the workplace, the imposition of race-based policies and the long-term effects of such discriminatory practices on "non-white" employees has been a key source of tension between employers and the *independent* trade unions. The complexity of the social environment is shown in the case of local authorities, as elsewhere, where despite the formal annulment of all race-based or discriminatory practices¹⁰, racial friction is still contended to undermine labour

relations in these organisations. Factors which have contributed to this trend include:

- * The disproportionate racial composition of the workforce in terms of work grades and leadership;
- * The continuation of informal discriminatory practices or measures, for example in terms of recruitment and selection;
- * The lack of desire to implement *affirmative action* policies but rather provide for *equal opportunities*;

(Bendix & Graham, 1988:39; Bredenkamp in Botha, 1990:29; Ernstzen, 1991:32; Nyembe, 1992:39; Pillay & Bendix, 1993:50; Poppleton, 1985:13; Swilling in Heymans & Tötemeyer, 1988:199; Trollip, 1990b:22)

2.1.2.2 The issue of "violence" in the workplace:

The growing *indifference* to, and nominal acceptance of, industrial action by *independent* trade unions has been cited as a key source of conflict. The acceptability of violent measures for seeking workforce demands is broadly ascribed to a variety of behavioural dynamics which, according to Von Holdt (in Botha, 1990:28), are mirrored by the wider society:

"Violence is integral to the way people experience social life in this country. Then, when a strike occurs and violence erupts, everyone jumps up and says: There's violence. But it has happened a long time before that."

2.1.3 The economic environment:

Economic disparities among the workforce and the pressure of growing unemployment have been key economic concerns in local authorities. These will be briefly described.

2.1.3.1 The issue of economic disparities in the workplace:

Economic factors, such as wage and salary issues, have traditionally been a key source of labour relations conflict. Particular concerns for *independent* trade unions in local authorities have included the issues of the *living standard wage*¹¹ and, until recently, the inequitable distribution of salaries according to racial classification. In local authorities, these issues included comparative wage disparities among similarly graded workers in the various local authorities, especially between rural and urban local authorities¹². (Nyembe, 1992:39; Roux, 1989:21)

2.1.3.2 The issue of unemployment in the workplace:

With approximately 3.6 million new job seekers expected to enter the South African labour market between 1985 and 2000, and estimates ranging up to 9 million unemployed by the turn of the century, growing concern over job security has become a key source of concern in the workplace. Local authority employees most "threatened" by these developments have been those of the semi-and unskilled category, the majority of whom are member to the *independent* trade unions.¹³ (Bredenkamp in Botha, 1990:29; South African Chamber of Business in Andrew Levy & Associates, 1990/1991:28; Van der Merwe, 1989:117).

2.1.4 The legislative environment:

The application of discriminatory legislation, complex legalistic procedures and a dualistic labour relations system have been key legal causes of conflict. These will be briefly described.

2.1.4.1 The issue of discriminatory legislation:

As noted above, the entrenchment of apartheid-related legislation in the workplace over the past decades, notably job reservation policies, has been a major source of conflict for *independent* trade unions¹⁴. Examples include, the Bantu Labour

Relations Regulations Amendment Act (Act 70 of 1973) [since repealed], which separated the rights of the *bantu*¹⁵ and *whites*, and the Industrial Conciliation Act (Act 11 of 1924) which, *inter alia*, forbade racially mixed trade unions (Du Toit, 1976:45). (Douwes Dekker, n.d.:56; Maller, 1989:6)

2.1.4.2 The issue of complex legislation:

The application of long and bureaucratic dispute settlement procedures have increased labour relations tensions in the local authorities. In particular, factors contributing to labour conflict, include:

- * The financial and psychological burden on trade unions in undertaking complicated and time-consuming legal procedures;
- * The inconsistency of the court with regard to various labour rights interpretations¹⁶; and
- * The overly prescriptive approach of the industrial courts in regulating conflict.

(Employment Law, 1991:85-86; Horwitz, 1989:8; Pillay, 1990:12; Pillay & Bendix, 1993:49)

2.1.4.3 The issue of dualistic legislation:

Unlike the relative liberalisation of private sector labour rights since the early 1980's, public sector labour rights remained relatively unchanged since the Wiehahn Commission of 1979¹⁷. Subsequently, the provision of unequal labour rights in both sectors has been a source of conflict notably in the public sector where more restrictive labour rights have been applied¹⁸. In local authorities, the demand for extended labour rights has, in particular, included the issue of trade union recognition¹⁹, which for the majority of independent trade unions has been justified on the premise that since employees pay taxes they ought to have the right to participate in organisational matters²⁰ (Bendix, 1989:73; Sing & Penceliah, 1989:55).

(Business Day, 9/06/1987 and 14/05/1989; Ernstzen, 1991:32; Horwitz, 1989:6; Horwitz, 1991b:9; Labour Research Service, 1990:(i); South African Institute of Race Relations, 1987/1988:663; Rand Daily Mail, 9/11/1980; The Argus, 26/11/1988).

2.1.5 The organisational environment:

The lack of organisational autonomy has been a source of labour conflict in the public sector. This factor will be briefly described.

2.1.5.1 The issue of the lack of organisational autonomy:

Excessive State intervention in labour relations matters in the public sector has been a key source of concern for many public sector trade unions. Notably, this includes *independent* trade unions in local authorities, which have accrued workplace tensions partly to:

- * The ineffective and limited powers of employers in acquiescing to labour demands; and
- * The concomitant negative image of such public functionaries²¹.

(Barnes in Coetzee, 1985:140-141; Craythorne, 1982:374).

2.2 Behavioural factors:

Labour disputes in local authorities can be ascribed to a number of behavioural factors. Labour relations can be characterised by a variety of confrontational dynamics which often exacerbate or trigger labour disputes. In South African local authorities these dynamics can be described in the context of each party within the labour relations process, namely:

- * The trade unions;
- * The employers; and
- * The State.

2.2.1 Employer confrontational dynamics:

Employer confrontational dynamics can be attributed to a recalcitrance for change regarding the *status quo*²² and the adoption of delaying tactics in the dispute settlement process.²³ Key factors contributing to this behavioural trait, include:

- * The "ideology of personnel management" which saw conflict as evidence of mismanagement and workers leaders as "agitators". This view led many employers to believe in their unilateral right to decide on the conditions of employment (Coetzee, 1985:143; Douwes Dekker, n.d.:56; Poppleton, 1985:10);
- * The close ties between employers and the State (based on the notion of mutual benefit²⁴) (Albertyn, 1989:83);
- * The high level of in-built distrust between parties (Douwes Dekker, n.d.:62)²⁵;
- * The lack of management sensitivity to the changing labour relations environment (Sing & Bendix, 1993:71); and
- * The lack of experience of both employers and trade unions "in coping with the power expression of unionism in the workplace" (Douwes Dekker, n.d.:36)²⁶.

2.2.2 Trade union confrontational dynamics:

Trade union confrontational dynamics have been characterised by an escalation in trade union militancy. Key interrelated factors contributing to this behavioural trait include:

- * Growing political instability and economic pressure;
- * The prescriptive and recalcitrant attitude of employers and the State towards certain trade union demands, such as recognition rights;

- * The rise in worker expectations as a result of the wider experience of local authorities employees with mass action campaigns which deepened the "workers awareness of being a class in and for themselves" (Ernstzen, 1991:33);
- * The growing participation of *external* trade unions in local authority matters (having ostensibly unionised their own sectors)²⁷ and the concomitant increase in intra-union conflict²⁸;
- * The advent of a "new type" of trade unionism subsequent to the annulment of closed shop agreements or compulsory membership; and
- * The evolvement of a culture of trade union loyalty and generalised sense of dissatisfaction among its members within the organisation²⁹.

(Andrew Levy & Associates, 1990/1991:12; Bendix, 1992:552; Bredenkamp in Botha, 1990:29; Ernstzen, 1991:33; Horwitz, 1991b:12; King, 1990:22; Pillay & Bendix, 1993:50)

2.2.3 State confrontational dynamics:

It is proposed that high levels of State intervention in labour relations by the use of *strong-arm* tactics³⁰ and an adoption of confrontational strategies³¹ have caused labour conflict. This behaviour by the State has been broadly ascribed to a perception of the need to "contain" trade unionism (Thompson, 1990:n.p.). Examples of these behavioural strategies include:

- * Negotiating with "tame staff associations" while excluding "militant democratic unions" from this process (Community Resource and Information Centre, 1989:12);
- * Co-opting trade union officials whose views are similar to that of the States (Golding, 1985:49); and
- * Providing material incentives and developing an ethic of loyalty "in the face of enormous opposition by the oppressed classes" (Golding, 1985:49).

In summation, the extent and nature of State intervention in local authorities in this context has been contentious. As noted previously, prior to the Wiehahn Commission report of 1979, extensive central and provincial government control was exerted in the form of directives and enactments with regard to local authorities personnel issues (Cloete, 1978:215; Craythorne, 1982:373). However, since the early 1980's, State interventionism has been characterised by a use of prescriptive legislation and the appointment of officials sympathetic to the State.³²

2.3 Structural factors:

Labour disputes in South African local authorities can also be attributed to a number of structural factors. In particular, these include inadequate labour relations policies and procedures and ineffective communications structures. Both will be briefly described.

2.3.1 The issue of inadequate labour relations policies and procedures:

Conflict in the public sector, notably local authorities, has been ascribed to "bad industrial relations practices or poor personnel administration" (McFarlane in Douwes Dekker, n.d.:48). Specific causes of concern include the lack of clear, and therefore effective, dispute regulation policies and the application of *ad hoc* solutions to labour dispute issues. (Community Resource and Information Centre, 1989:12; Financial Times, 8/11/1980; Nyembe, 1992:41; Poppleton, 1985:3).

2.3.2 The issue of ineffective communications:

Labour conflict in local authorities has also been ascribed to poor communications between employers and their respective trade unions³³. According to Magwaza (in Botha, 1990:29) a "failure by both sides to engage in real and meaningful communication at a very early stage" underscores the potential for conflict. The lack of effective communications in South African local authorities can be attributed to:

- * The historical polarisation of the workforce (notably of the independent trade union movement) and the employers;
- * Management misunderstanding and a misperception of worker demands³⁴; and
- * The vast size of the workforce in some local authorities³⁵.

(Bredenkamp in Botha, 1990:29; Coetzee, 1985:140; Magwaza in Botha, 1990:29; Van der Merwe, 1989:116)

3. The categories of labour disputes:

A key element of *disputes* has been the extension of their definition in 1979 from "a change in the conditions of employment pertaining to a dismissal or suspension to include Unfair Labour Practices" (Wood, 1987:45). *Unfair Labour Practices* can be defined as:

"Any labour practice which has the effect that the business of any employer or class of employer is or may unfairly be affected or disrupted thereby."

"The incitement too, support of, participation in or furtherance of any boycott of any product or service by any trade union, federation, office-bearer or official of such trade union or federation."

(Rycroft & Jordaan, 1990:221)

As well as,

"A failure or refusal to discuss, negotiate and introduce a disciplinary and grievance procedure, in circumstances where a trade union has approached the employer with such a request."

(Sing & Penceliah, 1989:52)

Furthermore, an *Unfair Labour Practice* can be brought by trade unions or employees against employers on the grounds of racial, sexual or any other form of arbitrary discrimination (Landman, 1991:22). In terms of jurisprudence, an *Unfair Labour Practice* is distinguished between essential services and the rest. In local authorities *Unfair Labour Practices* fall within the category of *disputes of right*. However, the precise interpretation of what constitutes an Unfair Labour Practice is blurred more recently by the development of a "body precedent" in the Appellate Division where the interpretation of the term can be adjusted to the unique circumstances of each case³⁶. (Thompson, 1992:504). (Rycroft & Jordaan, 1990:221; Sing & Penceliah, 1989:52; Thompson, 1992:502-504)

As noted previously, disputes can be classified as *disputes of right* or *disputes of interest*.

3.1 *Disputes of right*:

As noted previously, disputes of right involve issues which directly violate or challenge existing "rights". Rights broadly reflect agreed or legislated standards of practice which are non-negotiable. Consequently, disputes in this category must be interpreted according to existing legal provisions or clauses which regulate employment. However, rights may also be interpreted according to customary workplace practices. In local authorities, *disputes of right* have varied, but have included the legal contract of employment, actual working conditions, and related to this, working rules such as hours of work (Bendix, 1989:202; Cape Town City Council, 1990/1991:np). Subsequently, *disputes of right* can be settled by means of legal adjudication or compulsory arbitration (Bendix, 1989:202; Cape Town City Council, 1990/1:n.p.; Douwes Dekker, 1990:294; Pankert, 1980:723)

3.2 Disputes of interest:

As noted previously, *disputes of interest* concern issues where no definitive standards or legal measures are applied. They normally arise during the course of collective bargaining or negotiations. The outcome, however, may result in the adoption of new rights or standards whereby following disputes on similar matters may be regarded as *disputes of right*. In local authorities, *disputes of interests* have included a new right being sought by employees to which they are not entitled such as new hours of work. (Bendix, 1989:202; Cape Town City Council, 1990/1991:n.p.) Subsequently, *disputes of interest* are usually settled by means of negotiation or third party participation or decree. (Bendix, 1989:203; Cape Town City Council, 1990/1991:n.p; Douwes Dekker, 1990:294; Pankert, 1980:723)

4. Processes of labour dispute resolution and settlement:

The following aspects of labour dispute resolution and settlement in local authorities will be described:

- * Power driven processes and processes of right, notably the trends in industrial action and their regulation; and
- * Processes of interest, notably collective bargaining structures.

4.1 Power driven processes and processes of right:

A major source of concern in South African local authorities has been the use of industrial action by trade unions as a process for resolving labour disputes. Industrial action will be described in the following format:

- * A definition of *strikes* in South Africa;
- * The key characteristics of industrial action, including their causes in South Africa generally and in South African local authorities; and
- * A some measures applied for their resolution in South African local authorities.

4.1.1 Definition of strikes:

A *strike* is defined by the Labour Relations Act (Act 28 of 1956) [as amended] in section 1, as:

- * The *refusal* or *failure* of employees to:
 - *continue work* (irrespective of whether the discontinuance is partial or complete);
 - *resume work* or to *accept re-employment*;
 - *comply with the terms and conditions of employment applicable to them*;
- * Their *retardation* by slowing down the *progress of work*; or
- * *Obstruction* of work; or
- * *Breach* or *termination* of the *contract of employment*; provided that:
- * Such *refusal, retardation, obstruction, etc.* is the result of "combination, understanding or agreement" between the employees concerned, whether expressed or not, and that its purpose is to force the employer:
 - to *comply with demands or proposals* regarding *conditions of employment* or *any other matter*;
 - *not to institute intended changes*;
 - to *employ or dismiss any person*.

(Bendix, 1992:555)

Other specific forms of industrial action include:

- * *Work stoppages* which are proscribed in terms of s65 (1A) of the Labour Relations Act (act 28 of 1956) [as amended], if their purpose in following the contracts of employment to the letter can be proved to be an "obstruction" to the employment relationship (Cameron, Cheadle & Thompson, 1989:75);
- * *Work-to-rules* which are defined in context of a strike as an "obstruction to work which is carried out by a group of employees in furtherance of an industrial demand";
- * *Go-slows* which, in terms of a strike, constitute "a retardation of the progress of work which is carried out by a group of employees in furtherance of an industrial demand"; and
- * *Sit-ins* which can only be defined as a strike on similar grounds as provided for go-slows.³⁷

(Rycroft & Jordaan, 1990:218-220)

4.1.2 Features of industrial action:

The following aspects of industrial action will be described:

- * A background to South African industrial action trends; and
- * Industrial action in South African local authorities.

4.1.2.1 A background to South African industrial action trends:

This section provides a brief summation of key industrial action trends in South Africa. For the purposes of this dissertation, the following description of the major

features of industrial action is limited to the period 1988 to 1992, unless otherwise specified.

4.1.2.1.1 Industrial action trends (1972-1992):

An average of 497 strikes³⁸ occurred between 1972 and 1992³⁹. The number of strikes ranged from a low of 71 in 1972 to a high of 1148 in 1992. A decline in strike activity during the late 1970's was attributed to ineffective trade union representation and the imposition of prohibitive legislation with regard to fundamental employee rights. A similar event during the period 1983 until 1985 was ascribed to recessionary conditions and subsequent trade union fears with regard to retrenchments⁴⁰.

The level of strike activity during 1972-1992 is shown in **Annexure 7A - Table 1**.

Key interrelated features of industrial action during 1972-1992 included:

- * An increase in the number of man-days lost;⁴¹
- * An increase in the level of trade union militancy, a notable factor being the growth in "black" trade union organisation;
- * An escalation in workplace disputes; and
- * An increase in the level and proportion of industrial action taking place in the public sector.

(Andrew Levy & Associates, 1990/1991:15; Bendix, 1992:549-556; Central Statistical Services, 1993; King, 1990:17)

4.1.2.1.2 Industrial trends (1988-1992):

The following features of industrial action between 1988 and 1992 will be described:

- * Industrial action triggers;
- * Forms of industrial action; and
- * Characteristics of industrial action between 1988 and 1992.

4.1.2.1.2.1 Industrial action triggers:

Industrial action triggers can be classified into the following categories: *wages, wages and other, trade union matters, work conditions, disciplinary* and *other*. A description of each cause follows.

4.1.2.1.2.1.1 Wages:

Wages were the dominant cause of industrial action between 1988 and 1991 but were succeeded in 1992 as the primary trigger by *wages and other* issues⁴² (see **Annexure 7A - Table 3**). Average wage settlements between 1985 and 1990 were estimated at around 0%-3% above the inflation rate (Horwitz, 1991b:11). Between 1988 and 1992 percentile wage settlement gains ranged from a low of 12.6% in 1992 to 17.4% in 1989 and 1990 (see **Annexure 7A - Table 2**). In the public sector, average wage settlements between 1988 and 1992 were broadly consistent with the above-mentioned figures⁴³. However, relative wage increases below the inflation rate were noted in the second half of 1988, the first quarter of 1990, the second quarter of 1991 and the second quarter of 1992 (the lowest since 1986)⁴⁴. On the other hand, in the second half of 1992 public sector wage increases were the highest of any sector⁴⁵. (See **Annexure 7G: Average wage settlement for public sector employees relative to the inflation rate between 1985 and 1992**). (Central Statistical Services, 1993; Labour Research Service, 1990:5)

Average wage settlements in South Africa between 1988 and 1992 are shown in **Annexure 7A - Table 2**.

4.1.2.1.2.1.2 Wages and "other" issues:

Wages and other issues declined in frequency between 1988 and 1991 but in 1992 became the primary cause of industrial action (see **Annexure 7A - Table 3**). Examples of this trigger include the issues of fringe benefits and paid leave. A notable feature was the close association between the frequency of *wages and other* and *disciplinary*

issues (Horwitz, 1991b:12). (Central Statistical Services, 1993)

4.1.2.1.2.1.3 Conditions of employment:

Conditions of employment issues followed a similar pattern to that of the above trigger in terms of its relative decline in frequency between 1988 and 1991 and notable escalation as a cause of industrial action in 1992 (see **Annexure 7A - Table 3**). An example of a *condition of employment* issue is working hours. (Central Statistical Services, 1993)

4.1.2.1.2.1.4 Disciplinary issues:

Disciplinary issues broadly declined as a cause of industrial action between 1988 and 1992 (see **Annexure 7A - Table 3**). Examples of this trigger include issues of possible retrenchment and employee dismissals, fines or other forms of punishment. (Central Statistical Services, 1993)

4.1.2.1.2.1.5 Trade Union Matters:

Trade union matters were relatively infrequent triggers of industrial action from 1988 to 1991 and did not feature as a cause of strikes in 1992 (see **Annexure 7A - Table 3**). A notable example of trade union matters involved the issue of recognition agreements, especially by unregistered trade unions, which sought mutual or "good faith" recognition agreements with their employers. (Central Statistical Services, 1993; Christie, 1992:23)

4.1.2.1.2.1.6 "Other" issues:

Other issues ranged in frequency as a cause of industrial action, with an increase between 1988 and 1990 and a decline after 1990 (see **Annexure 7A - Table 3**). Notably, often interrelated triggers included the issue of privatisation in the case of public sector organisations, allegations of discriminatory practices, political sympathies

and calls for affirmative action. (Andrew Levy & Associates, 1990/1991:2; Central Statistical Services, 1993)

The relative frequency of the above strike triggers for the period 1988-1992 is shown in **Annexure 7A - Table 4**.

4.1.2.1.2.2 Features of industrial action:

Industrial action can be classified into the following categories: *strikes*, *workstoppages*, *overtime bans*, *go-slows*, *lockouts* and *other*. For the five year period (1988-1992), the comparative usage of these forms of industrial action averaged: *overtime bans* (33%), *strikes* (31%), *go-slows* (19%), *workstoppages* (13%), *other* (4%) and *lockouts* (0.5%). These figures are shown in **Annexure 7A - Table 5**.

Over the five year period (1988-1992) the usage of overtime bans, strikes and go-slows broadly increased while workstoppages, *lockouts* and other forms of industrial action decreased (see **Annexure 7A - Table 4**).

4.1.2.1.2.3 Characteristics of industrial action (1988-1992):

The above trends will be described in the context of the characteristics of industrial action for each year between 1988 and 1992.

4.1.2.1.2.3.1 Industrial action during 1988:

The number of strikes⁴⁶ in South Africa marginally decreased from 1148 in 1987 to 1025 in 1988 (refer to **Annexure 7A - Table 1**). Causes of industrial action, in order of descending frequency, involved: *wages* (320 strikes), *wages and other* (231 strikes), *conditions of employment* (189 strikes), *disciplinary* (176 strikes), *other* (64 strikes) and *trade union matters* (45 strikes) (refer to **Annexure 7A - Table 3**). *Overtime bans* were the primary form of industrial action (refer to **Annexure 7A - Table 4**). The public sector accounted for 41.5% of the total industrial action during 1988. (Andrew Levy

& Associates, 1988/1989; Central Statistical Services, 1993)

4.1.2.1.2.3.2 Industrial action during 1989:

The number of strikes in South Africa decreased from 1025 in 1988 to 942 in 1989 (refer to **Annexure 7A - Table 1**). Causes of industrial action, in order of descending frequency, involved: *wages* (306 strikes), *conditions of employment* (184 strikes), *other issues* (183 strikes), *wages and other* (123 strikes) and *disciplinary* (118 strikes) (refer to **Annexure 7A - Table 3**). *Overtime bans* continued to be the primary form of industrial action (refer to **Annexure 7A - Table 4**). The public sector accounted for just 1% of the total industrial action during 1989. (Andrew Levy & Associates, 1989/1990; Bendix, 1992:549-556; Central Statistical Services, 1993)

4.1.2.1.2.3.3 Industrial action during 1990:

The number of strikes in South Africa marginally decreased from 942 in 1989 to 885 in 1990 (refer to **Annexure 7A - Table 1**). Causes of industrial action, in order of decreasing frequency, involved: *wages* (317 strikes), *other issues* (219 strikes), *conditions of employment* (118 strikes), *disciplinary* (109 strikes), *wages and other* (100 strikes) and *trade union matters* (22 strikes) (refer to **Annexure 7A - Table 3**). *Overtime bans* continued to be the primary form of industrial action (refer to **Annexure 7A - Table 4**). The public sector accounted for 24% of the total industrial action during 1990. (Andrew Levy & Associates, 1990/1991; Bendix, 1992:549-556; Central Statistical Services, 1993)³

4.1.2.1.2.3.4 Industrial action during 1991:

The number of strikes in South Africa decreased from 885 in 1990 to 600 in 1991 (refer to **Annexure 7A - Table 1**). Causes of industrial action, in order of decreasing frequency, involved: *wages* (201 strikes), *other issues* (181 strikes), *wages and other* (89 strikes), *disciplinary* (62 strikes), *conditions of employment* (51 strikes) and *trade union matters* (16 strikes) (refer to **Annexure 7A - Table 3**). *Strikes* became the

primary form of industrial action during 1991 (refer to **Annexure 7A - Table 4**). The public sector accounted for 8% of total industrial action during 1991. (Andrew Levy & Associates, 1990/1991; Bendix, 1992:549-556; Central Statistical Services, 1993)

4.1.2.1.2.3.5 Industrial action during 1992:

The number of strikes in South Africa increased from 600 in 1991 to 789 in 1992 (refer to **Annexure 7A - Table 1**). Causes of industrial action, in order of decreasing frequency, involved: *wages and other* (508 strikes)⁴⁷, *other issues* (82 strikes), *wages* (76 strikes), *conditions of employment* (74 strikes), *disciplinary* (49 strikes) and *trade union matters* (no strikes) (refer to **Annexure 7A - Table 3**). *Strikes* continued to be the primary form of industrial action during 1991 (refer to **Annexure 7A - Table 4**). The public sector accounted for 12.7% of total industrial action during 1992. (Andrew Levy & Associates, 1990/1991; Bendix, 1992:549-556; Central Statistical Services, 1993)

4.1.2.2 Industrial action trends in South African local authorities (1988-1992):

The following features of industrial action in local authorities will be described:

- * A background to the broad pattern of industrial action in local authorities;
- * The key triggers of industrial action in local authorities;
- * The key characteristics of industrial action in local authorities; and
- * The costs of industrial action in local authorities.

These above features of industrial action will be described for the period 1988-1992. In some instances, a comparative analysis with broader South African trends is also provided.

4.1.2.2.1 A background to the broad pattern of industrial action:

The incidence of industrial action generally increased between 1988 and 1992. A key feature was the increase in the percentage of local authorities industrial action taking within the public sector, for example reaching 23% or 46.2% of total strike days in the first half of 1990 (Labour Research Service, 1990:5). The majority of strikes⁴⁸ in local authorities were caused by the South African Municipal Workers Union (SAMWU) which in 1990, for example, claimed over 50 out of an estimated 79 strikes (Central Statistical Services, 1991; Ernstzen, 1991:34). The number of local authority employees involved in industrial action ranged from 5 335 in 1988 to 48 898 in 1992. Industrial action in local authorities was also characterised by the high percentage of "non-white" strikers involved (Boshoff & Bendix, 1993:32). (Andrew Levy & Associates, 1988/1989-1992/1993; Central Statistical Services, 1991; Municipal Employers Organisation, 1988-1992)

Annexure 7B - Table 1 illustrates the number of striking workers in local authorities between 1988 and 1992.

4.1.2.2.2. Key industrial action triggers:

As noted above, the major triggers of industrial action in local authorities can be categorised by the following: *wages, wages and other, work conditions, trade union matters, disciplinary* and *other*. A description of each trigger follows.

4.1.2.2.2.1 Wages:

Wages, as a cause of industrial action, ranged from a high of 25% of total manhours lost in 1991 to a low of 3% of total manhours lost in 1992. Key issues in local authorities included the "Living Wage Campaign"⁴⁹ and the determination of equal wage scales for all local authorities. In comparison to the total manhours lost in South Africa, the level of *wages* as a trigger of industrial action in local authorities was broadly below the national average. (Central Statistical Services, 1993; Municipal

Employers Organisation, 1988-1992)

The above figures are shown in **Annexure 7C - Table 1.**

4.1.2.2.2 Wages and "other" issues:

Wages & other, as a cause of industrial action, ranged from a high of 86% of total manhours lost during 1990 to a low of 3% of total manhours lost in 1992. A key reason for the high levels of *wages and other* triggers in local authorities generally was the impact of fixed annual budgets which gave "rise to compensatory demands in other fields" (Barnes in Coetzee, 1985:139). In comparison to total manhours lost in South Africa, the level of *wages and other* as a trigger of industrial action in local authorities was broadly above the national average during 1990 and 1991 but below the national average during 1988, 1989 and 1992. (Central Statistical Services, 1993; Municipal Employers Organisation, 1988-1992)

The above figures are shown in **Annexure 7C - Table 2.**

4.1.2.2.3 Work conditions:

Work conditions, as a cause of industrial action, ranged from a high of 25% of total manhours lost during 1992 to a low of 0% of total manhours lost in 1989 and 1990. Key issues in local authorities included paid leave and a shorter working week. In comparison to total manhours lost in South Africa, the level of *work conditions* as a trigger of industrial action in local authorities was similar in 1988 but ranged from below average in 1989, 1990 and 1991 to above the national average in 1992.

The above figures are shown in **Annexure 7C - Table 3.**

4.1.2.2.2.4 Trade union matters:

Trade union matters, as a cause of industrial action, ranged from a high of 16% of total manhours lost during 1989 to a low of 0% of total manhours lost in 1990. Key issues in local authorities involved trade union recognition agreements and the use of stop-order facilities. In comparison to total manhours lost in South Africa, the level of *trade union matters* as a trigger of industrial action in local authorities was broadly above the national average except during 1990. (Central Statistical Services, 1993; Municipal Employers Organisation, 1988-1992)

The above figures are shown in **Annexure 7C - Table 4.**

4.1.2.2.2.5 Disciplinary issues:

Disciplinary issues, as a cause of industrial action, ranged from a high of 2% of total manhours lost during 1991 and 1992 to a low of 0% of total manhours lost in 1990. Key issues in local authorities involved employee grievances against alleged supervisory prejudice, dismissal and other unfair labour practices. In comparison to total manhours lost in South Africa, the level of *disciplinary* issues as a trigger of industrial action in local authorities during 1988-1992 was below the national average. (Central Statistical Services, 1993; Municipal Employers Organisation, 1988-1992)

The above figures are shown in **Annexure 7C - Table 5.**

4.1.2.2.2.6 "Other" issues:

Other issues, as a cause of industrial action, ranged from a high of 62% of total manhours lost during 1992 to a low of 3% of total manhours lost in 1990. Key issues in local authorities involved privatisation concerns⁵⁰, affirmative action⁵¹, the legitimacy of local authority institutions⁵² and political campaigns and mass action⁵³. In comparison to total manhours lost in South Africa, the level of *other* as a trigger of industrial action in local authorities was above the national average during

1988, 1989 and 1992 but below the national average in 1990 and 1991. (Central Statistical Services, 1993; Municipal Employers Organisation, 1988-1992)

The above figures are shown in **Annexure 7C - Table 6**.

4.1.2.2.3 Characteristics of industrial action (1988-1992):

The characteristics of industrial action triggers in local authorities are briefly examined between 1988 and 1992.

4.1.2.2.3.1 Industrial action triggers in 1988:

Industrial action in local authorities during 1988 was caused, in order of descending frequency, by *other* (61%), *work conditions* (18%), *wages* (10%), *wages and other* (6%), *trade union matters* (4%) and *disciplinary* issues (1%). (Municipal Employers Organisation, 1988)

These figures are shown in **Annexure 7D - Table 1**.

4.1.2.2.3.2 Industrial action triggers in 1989:

Industrial action in local authorities during 1989 was caused, in order of descending frequency, by *other* (58%), *wages* (21%), *trade union matters* (17%), *wages and other* (4%), *disciplinary* issues (1%) and *work conditions* (0%). (Municipal Employers Organisation, 1989)

These figures are shown in **Annexure 7D - Table 2**.

4.1.2.2.3.3 Industrial action triggers in 1990:

Industrial action in local authorities during 1990 was caused, in order of descending frequency, by *wages and other* (86%), *wages* (11%), *other* (3%), *trade union matters*

(0%), *disciplinary* issues (0%) and *work conditions* (0%). (Municipal Employers Organisation, 1989)

These figures are shown in **Annexure 7D - Table 3.**

4.1.2.2.3.4 Industrial action triggers in 1991:

Industrial action in local authorities during 1991 was caused, in order of descending frequency, by *wages and other* (59%), *wages* (25%), *other* (7%), *trade union matters* (6%), *disciplinary* (1%) and *work conditions* (1%). (Municipal Employers Organisation, 1989)

These figures are shown in **Annexure 7D - Table 4.**

4.1.2.2.3.5 Industrial action triggers in 1992:

Industrial action in local authorities during 1992 was caused, in order of descending frequency, by *other* (62%), *work conditions* (25%), *trade union matters* (5%), *wages* (3%), *wages and other* (3%) and *disciplinary* issues (2%). (Municipal Employers Organisation, 1989)

These figures are shown in **Annexure 7D - Table 5.**

4.1.2.2.4 Overview of industrial action triggers (1988-1992):

Annexure 7E - Table 1 illustrates the relative frequency of industrial action trends during 1988-1992 as an overall average for this period.

4.1.2.2.5 Costs of industrial action (1988-1992):

The costs of industrial action in local authorities during the period 1988-1992 ranged from a low of 1 784 man-days or 6 728 value-days in 1988 to a high of 250 767 man-

days or 1 001 257 value-days during 1990. These figures reflected an overall increase in the cost of industrial action in local authorities⁵⁴. (Municipal Employers Organisation, 1988-1992)

These trends are shown in **Annexure 7F - Table 1**.

4.1.3 Measures applied for regulating industrial action:

In summation, a variety of measures can be applied by local authorities for regulating industrial action, namely:

- * Seeking a court interdict;
- * Dismissing striking employees;
- * Instituting a "lockout";
- * Applying a "no work - no pay" policy;
- * Allowing police or military intervention; and/or
- * Negotiating with the strikers to return to work.

A selection of one or more of the above measures can be applied by a number of approaches. These will be briefly described.

4.1.4 Approaches for regulating industrial action:

Approaches for resolving industrial action in local authorities include:

- * *In-house* agreements between employers and trade unions in terms of procedures to be followed;
- * *Strategic* or *proactive* plans, which include measures for the continuation of services; or
- * The assumption that industrial action warranted little attention or required coercive measures.

Two examples of such approaches, include:

- * *Kimberley City Council*: Activates a "strategic plan" in the case of service disruption. This includes provisions made for the continuation of four specific services (electricity, water, sanitation and refuse removal) by means of a pre-arranged skeleton crew. (Interview - Kimberley City Council, 5th July 1991)
- * *Johannesburg City Council*: A principle step is the resumption of immediate negotiations within the framework of reasonable ultimatums whereby workers are persuaded to return to work and render services which have been disrupted. (Interview - Johannesburg City Council, 13 July 1990)

With regard to the above measures, the use of the Industrial Court, the dismissal of employees, and the use of an employer *lockout* will be briefly examined.

4.1.4.1 The Industrial Court:

Court interdicts involve the application of a legal injunction by employers against striking workers to proscribe industrial action in a local authority. This process involves a representation by employers and striking workers in such a court where a final judgement is reached. The Industrial Court can adopt one of two approaches to the issue of industrial action, namely:

- * A functional approach where issues of procedure are raised; or
- * A substantive approach where the nature of the dispute is brought into question.

These approaches involve consideration of the following aspects of industrial action:

- * The *causes* of industrial action, in terms of their classification as *disputes of interest* or *disputes of right*, essentially determines the legitimacy of a strike (with *disputes of interest* being more favourably looked on than *disputes of right*);
 - * The *circumstances* of the parties, i.e. the nature of the employers' business. This aspect includes consideration of the loyalty of previous service by striking employees and the claimed loss of their important benefits resulting in industrial action; and
 - * The *type* of industrial action undertaken. Notably, the adoption of *wildcat strikes*, *go-slows* and *sit-ins* are less acceptable to Industrial Courts than other forms.
- (Olivier, 1993:595)

4.1.4.2 Dismissal of employees:

A dismissal of striking employees is highly contentious. According to the Industrial Court, two key conditions usually need to be fulfilled before this measure can be sanctioned, namely:

- * That industrial action threatened to *destroy* the livelihood of the employer. In local authorities this condition is usually justified by employers on the premise that services disrupted are *essential* for public welfare; And
 - * That procedurally this measure is *sound*, i.e. that negotiations have been attempted in good faith and that local and/or statutory procedures have been followed beforehand.
- (Olivier, 1993:595)

In addition to these conditions, the *conduct* of both parties is also taken into consideration. In particular, the Industrial Court notes that employers should not be overhasty to implement a dismissal but rather that they provide an *ultimatum* warning of an intent to dismiss workers beforehand. In conclusion though, the Court finds that

"dismissal may be justified where employees have been guilty of aggression, violence or intimidation". (Olivier, 1993:595)

4.1.4.3 Employer lockouts:

A *lockout* can be described as the withdrawal of work opportunities for employees. According to the Labour Relations Act (Act 28 of 1956) [as amended], a *lockout* is defined as:

- * *The exclusion by the employer of a number of employees from his premises;*
- * *An employer's partial or total discontinuance of business or work;*
- * *A breach or termination of the contracts of employment of a body or a number of employees,*
provided that the purpose of his action was to oblige the employees:
 - *to agree or to comply with any demands or proposals,*
 - *to accept any change in the conditions of employment,*
- * *to agree to the employment or dismissal of any person.*

(Bendix, 1992:555)

Those employers applying a *lockout* in their local authorities where industrial action occurs, justify this approach on two broad premises:

- * That industrial action is illegal and therefore its occurrence can be countered by similar measures; and
- * That the consequences of allowing employees into the workplace could further damage or hinder services to the community.

Therefore, it is suggested that a key objective of an employer *lockout* is to force striking employees "to take responsibility for their industrial action" (Christie, 1992:26). In certain instances, some local authorities may institute a *selective lockout* by closing down departments in which the striking workers are employed. (Douwes Dekker, n.d.:70; Rycroft & Jordaan, 1990:221)

4.2 Processes of interest:

The main form of resolving labour disputes is the application of collective bargaining. A brief description of the collective bargaining structure in local authorities follows.

4.2.1 The collective bargaining process and structure:

Collective bargaining can take place through an Industrial Council or by other prearranged mechanisms within a local authority. In examining this process, the following features will be briefly described:

- * Bargaining representation;
- * Bargaining scope; and
- * Bargaining levels.

4.2.1.1 Bargaining representation:

The representation of parties on an Industrial Council varies⁵⁵. Nominally these arrangements involve an equal representation by the trade unions and their respective employers. The *Referee* or third party facilitator can be elected by both parties, nominated by the employers, or in some instances, selected by the State.

A key issue involves the concern with the fairness of representation during this process. Specifically, it is contended that the practice of equal representation by all recognised trade unions of a local authority, undermines the notion of democratic consensus by allowing smaller trade unions to have an equal say to larger trade

unions in labour matters.

Another issue is the lack of recognition by employers of some trade unions and therefore a denial of their right to bargain. This matter can be illustrated by the recent nation-wide SAMWU campaigns in local authorities for, *inter alia*, national recognition.

(Bendix & Swart, 1982:1; Craythorne, 1992; Ernstzen, 1991)

4.2.1.2 Bargaining scope:

The bargaining scope is broadly restricted to *disputes of interest*. Examples of labour matters which can be bargained for include, wages, disciplinary procedures or employee benefits. Some issues, such as wages, are nominally bargained for annually, while other issues, such as disciplinary procedures, can be bargained for on an *ad hoc* basis.

4.2.1.3 Bargaining levels:

Collective bargaining takes place at two levels, namely the:

- * ***Organisational level:*** Which can involve an Industrial Council or other structure in a local authority. This level is frequently adopted by larger municipalities or local authorities, for example the Industrial Council of Kimberley City Council or Cape Town City Council; and
- * ***Regional level:*** Which nominally takes place in an Industrial Council (usually permanent) representing the interests of employers and trade unions of a number of local authorities. This level is usually adopted by smaller or rural local authorities.

(Bendix & Swart, 1982:1; Craythorne, 1992)

5. Approaches to dispute settlement in local authorities:

In summation, labour disputes can be settled by a number of alternative or inter-related approaches, namely:

- * Negotiating issues by means of internal organisational mechanisms or an Industrial Council (by mediation or voluntary arbitration);
- * The use of an independent advisory organisation, such as the Independent Mediation Society of South Africa (Independent Mediation Society of South Africa) (by means of mediation or voluntary arbitration);
- * The use of a Conciliation Board by applying to the Minister of Manpower for this structure; or
- * Failing any of the above, the use of an Industrial Court (by means of litigation, voluntary or compulsory arbitration)⁵⁶.

(Brassey *et al.*, 1987:18-19; Christie, 1992:28; Craythorne, 1990:278; Wiehahn, 1988:71; Wissink in Fox, Schwella & Wissink, 1991:200)

Annexure 7H illustrates the statutory framework for dispute settlement in South African local authorities.

6. Overview:

This chapter outlined the nature of labour disputes and their settlement in South African local authorities, namely:

- * The causes of conflict in the context of environmental, behavioural and

structural causes;

- * The categories of labour dispute, namely *disputes of right* and *disputes of interest*;
 - * The processes of dispute resolution and settlement, with specific focus on industrial action trends and the structure of collective bargaining; and
 - * In conclusion an outline of the dispute settlement process in South African local authorities.
-

CHAPTER EIGHT

LOCAL AUTHORITY LABOUR RELATIONS QUESTIONNAIRE

1. Introduction:

This Chapter outlines the perceptions and opinions of key personnel involved in the regulation of labour relations practices in South African local authorities. The following section provides a background to the delphi questionnaire survey, namely:

- * A background to the target group;
- * A background to the themes of this survey;
- * A background to the layout of each theme; and
- * A comment on the reference to the target group and methodology of the delphi questionnaire.

2. A background to the target group:

The following personnel participated in the *delphi* questionnaire:

Employers: These involved Personnel officials who managed labour relations within a local authority.

Trade unions: These involved the leadership and executive members of trade unions and professional associations in local authorities.

The State: These involved key individuals in State institutions which regulated or advised on local authority labour relations matters.

3. A background to the themes of this survey:

The following six questionnaire themes are applied:

Theme One: A background to labour relations in South African local authorities.

Theme Two: Parties to the labour relationship.

Theme Three: Conducting the labour relationship.

Theme Four: Causes of labour conflict.

Theme Five: Processes of labour dispute resolution and settlement.

Theme Six: Approaches to dispute settlement.

4. A background to the layout of each theme:

The findings of these themes is presented in the following manner:

Theme: The *theme* is a title of one of the above themes. Most *themes* comprise a number of *topics*;

Topic: The *topic* describes an issue raised in the questionnaire. In the event of more than one issue, each issue follows the layout described below.

Background: The *background* describes initial findings made during preliminary surveys (i.e. interviews with some of the above participants before the delphi questionnaire survey was performed).

Purpose: The *purpose* motivates the style of the question and defines the target group.

Question: The *question* describes the focus and options of the subject presented to the target group.

Response: The *response* presents a statistical description of the findings. In some issues this analysis is illustrated in tabular format. Due to the uneven response rate of the aforementioned parties, any applied comparative analysis has been *weighted* in order to reflect commensurate views;

Additional commentary: The *commentary* lists additional notes or views described by the respondents in relation to a specific issue.

Overview: The *overview* summarises the findings of each *topic*.

4.1 Comment:

For the purposes of this chapter, respondents are referred to by their party or target group. For example, trade union respondents are referred to as *trade unions*, unless otherwise specified.

Finally, a more detailed explanation of the methodology and background to this survey is provided in Chapter One: 3.3 Delphi questionnaire.

5. Theme One: A background to labour relations in South African local authorities.

The following topic was addressed:

- * The labour relations environment.

5.1 Topic One: The labour relations environment.

The perceptions of the target group with regard to the existing labour relations climate in local authorities was sought.

5.1.1 A background to preliminary findings:

Preliminary surveys indicated that *employers* and *trade unions* viewed labour relations within their local authority's in a positive light. (Interviews, 1990-1992)

5.1.2 Purpose:

The purpose of this topic was to establish the validity of this view.

5.1.3 Question:

Employers and *trade unions* were asked to rate the labour relations climate within their respective local authority. The State was asked to rate the labour relations climate in local authorities generally. Respondents were asked to choose one of the following items which best their view in this regard:

- * *Co-operative/Good;*
- * *Grudging/Accepting;* and
- * *Hostile/Bad.*

5.1.4 Response:

In general, all the parties rated the labour relations environment in local authorities as:

- * *Co-operative/Good* (68%); and
- * *Grudging/Accepting* (32%).

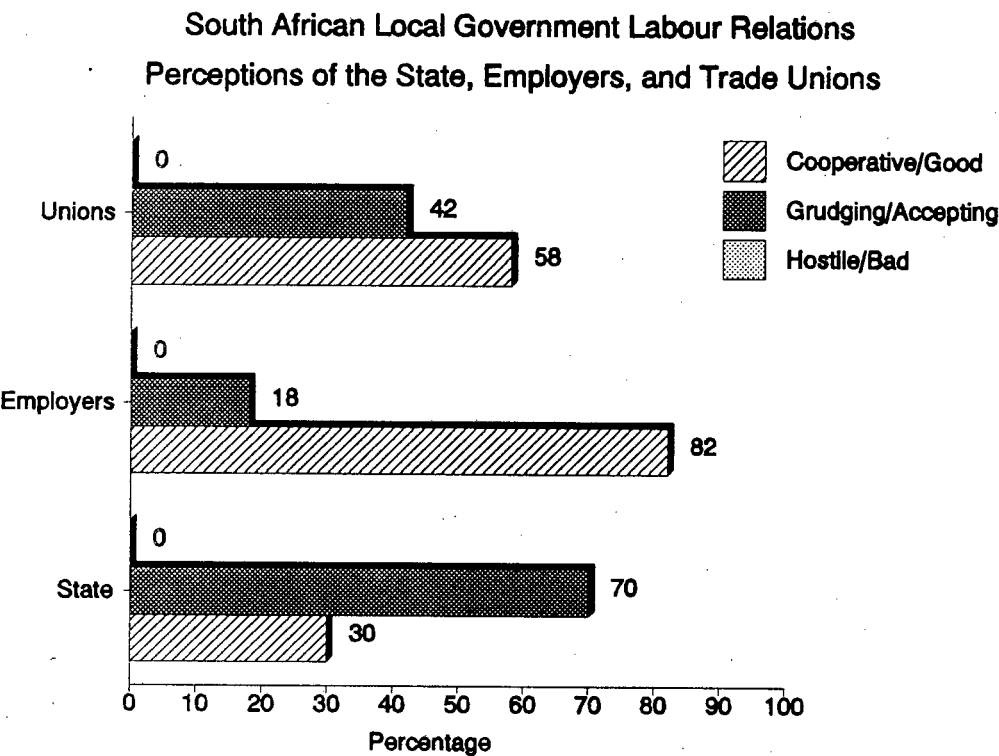
No participants rated the labour relations environment as *hostile/Bad*.

The majority view of each party was as follows:

- * Employers: *Co-operative good* (80%);
- * Trade unions: *Co-operative/Good* (52%); and
- * The State: *Grudging/Accepting* (70%).

These findings are illustrated in **Table 1** below:

Table 1



5.1.5 Additional commentary:

No additional comments were listed.

5.1.6 Overview:

Both the *employers* and *trade unions* viewed the labour relations environment in local authorities as cooperative. On the other hand, the majority of *State* respondents felt that the labour relations environment was grudging or accepting.

6. Theme Two: Parties to the labour relationship.

The following topics were addressed:

- * The role of trade unions in local authorities; and
- * The role of the State in regulating labour relations in local authorities.

6.1 Topic One: The role of trade unions in local authorities.

The extent to which trade unions should participate in determining employee policies in their workplace was examined.

6.1.1 A background to preliminary findings:

Preliminary surveys indicated that all three parties were concerned with the role of *trade unions* in determining employee policies within their local authority's. The *State* expressed a need for more effective *trade union* participation in such matters but at a central level, in an advisory capacity. *Employers* and *trade unions* both agreed that the latter party played a role in determining employee policies but differed with regard to the extent of participation taking place.

6.1.2 Purpose:

The purpose of this question was to clarify the above perceptions.

6.1.3 Question:

The topic was addressed to all three parties.

The *State* was asked to rate the extent to which *trade unions* ought to be participate in determining employee policies in local authorities. Respondents were asked to choose one of the following scaled items:

- * *To be allowed to participate fully in all issues*
- * *To participate in some issues only; and*
- * *Not to be allowed to participate at all.*

Employers and *trade unions* were asked the extent to which the latter party participated (or were consulted) within their local authority in terms of the above process.

Respondents were given the choice of a *yes* or *no* answer.

6.1.4 Response:

The majority of *State* respondents (80%) indicated that *trade unions* should *be allowed to participate fully in all issues* regarding employee policies in local authorities.

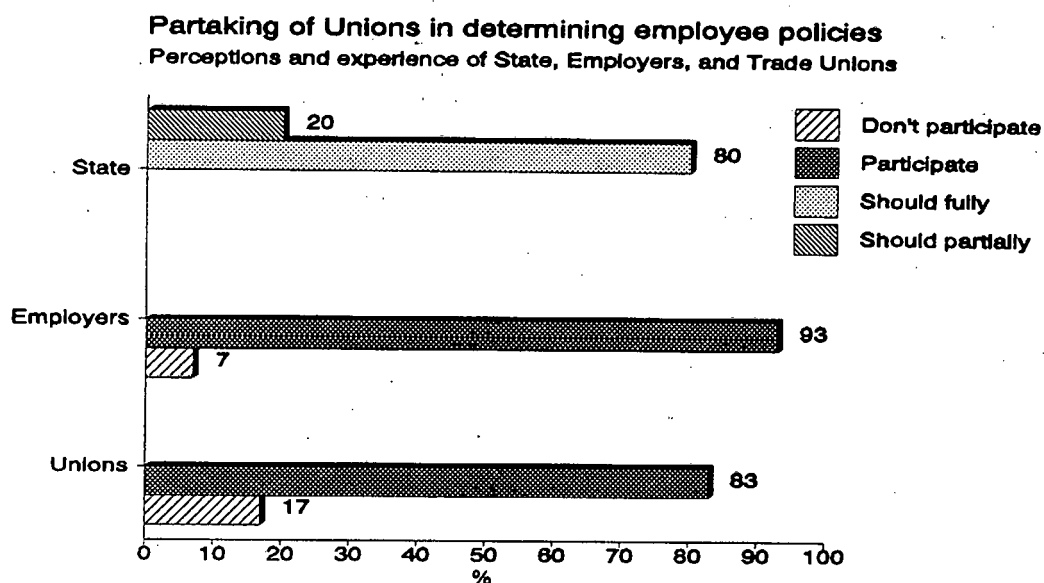
Most *employers* (93%) and the *trade unions* (83%) indicated that *trade unions* did participate in this process.

These findings are illustrated in **Table 2** below.

6.1.5 Additional commentary:

The *State* respondents generally justified their choice on the premise that full participation by trade unions in such processes improved the possibility for greater labour peace and stability in local authorities. In some instances, reference was also made to the International Labour Organisations' Convention in this regard. A *State* respondent listed the following objectives as laid out by their Industrial Council constitution:

Table 2



- * "To consider and regulate in accordance with the provisions of the Labour Relations Act (sic), matters of mutual interest to the parties and to prevent and settle disputes";
- * "To promote good relations between the employer and its employees"; and
- * "To use its endeavours generally in the direction of maintaining labour peace within the undertaking".

Those *employers* who indicated that *trade unions* participated in such matters within their local authority, described a system of "working groups" which comprised *employer* and *trade union* representatives. These groups were either consulted or negotiated on matters pertaining to employee policies within that organisation. The permanent structures usually had an "on-going" programme in this regard, while provisional structures were established on a "needs-only" basis. It was noted that local authorities which adopted permanent "working groups" favoured a process of negotiation.

An *employer* respondent added that the working group arrangement in their local authority was restricted to "white" *trade unions* only.

Negotiable topics included one or a mixture of the following:

- * Working hours,
- * Stand-by allowances; and
- * Salaries.

Employers who negotiated with their trade unions justified this approach on the need for a cooperative labour relations environment where standing arrangements were seen to be "legitimate".

Other *employers* described an "open door policy" approach which allowed *trade unions* to present workplace concerns to management. Another *employer* respondent noted that *trade unions* did not participate in the policy process but were notified of planned changes in this regard which could be contested by their Industrial Council.

Finally, some *trade unions* commented that their participation was largely restricted to salary issues.

6.1.6 Overview:

The *State* supported the notion that *trade unions* should participate fully in determining employee policies within their local authorities. Findings by *employers* and *trade unions* generally concurred with this assertion. The method of participation varied amongst local authorities. Two specific arrangements were described, these being the "working group" structures and the "open door" policy approach. The former structure usually involved a process of negotiation while the latter approach involved a consultative or bargaining

process. Finally, it was noted that in many instances the topics for participation were largely limited to salary issues.

6.2 Topic Two: The role of the State in regulating labour relations in local authorities:

The issue of State intervention in regulating labour disputes in local authorities was examined from the perspective of the *State*.

6.2.1 A background to preliminary findings:

Findings during the preliminary survey indicated that the *State* considered an advisory role in this regard as suitable. Both *employers* and *trade unions* expressed little concern in this matter.

6.2.2 Purpose:

The purpose of this question was to assess the extent to which the *State* sought to intervene in regulating labour disputes in local authorities.

6.2.3 Question:

State participants were asked to select one of the following roles of the *State* for regulating labour disputes in local authorities:

- * *An interventionary role,*
- * *An advisory role; and*
- * *no role.*

6.2.4 Response:

All *State* respondents indicated that the *State* ought to apply an *advisory role* for regulating labour disputes in local authorities.

6.2.5 Additional commentary:

No additional comments were provided.

6.2.6 Overview:

The *State* preferred an advisory role in regulating labour disputes in local authorities.

7. Theme Three: Conducting the labour relationship.

The following topics were addressed:

- * The right to strike; and
- * The definition of local authorities as "essential services".

7.1 Topic One: The right to strike.

The issue of the right to strike for local authority employees was explored.

7.1.1 A background to preliminary findings:

Preliminary surveys indicated that the issue of the right to strike was highly contentious. A clear division of views between *employers* and *trade unions* was noted. The former party supported a limited right to strike for local authority employees, while the latter party preferred an unrestricted right to strike.

7.1.2 Purpose:

The purpose of this topic was to establish the views of both the above parties and the State on this issue.

7.1.3 Question:

The question was addressed to all three parties.

The parties were asked to choose between three possible options with regard to a right to strike in local authorities, namely:

- * An unlimited right to strike;
- * A limited right to strike; or
- * Prohibiting the right to strike.

7.1.4 Response:

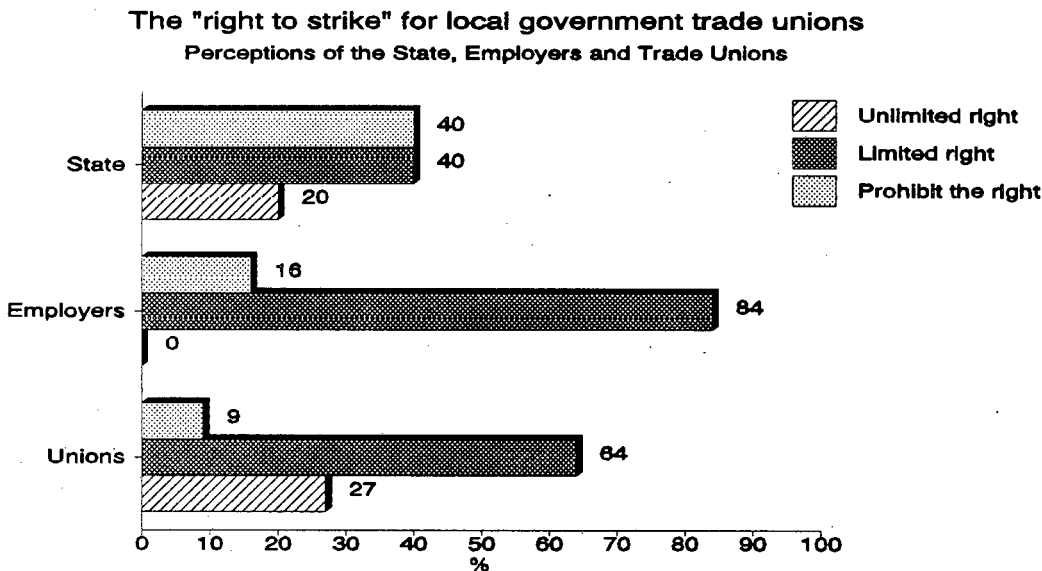
The State was divided between a *prohibition of the right to strike* (40%) and a *limited right to strike* (40%), and to a lesser extent an *unlimited right to strike* (20%).

Employers generally favoured the option of a *limited right to strike* (84%) and to a lesser degree a *prohibition of the right to strike* (16%).

Trade unions similarly preferred a *limited right to strike* (64%) and, to a lesser extent, selected an *unlimited right to strike* (27%) and a *prohibition of the right to strike* (9%).

The above figures are illustrated in **Table 3** below.

Table 9.



7.1.5 Additional commentary:

Those parties choosing the prohibition of the right to strike justified this choice on the following grounds:

- * That local government services were "essential services" by law;
- * That a right to strike could harm the public; and
- * That effective alternative dispute settlement mechanisms existed.

A *trade union* respondent added that if dispute settlement alternatives were "ineffective", then a strike ought to be embarked on.

Parties choosing a limited right to strike justified their choice on the following grounds, namely that:

- * The threat of grievances and tensions would eventually "explode into uncontrolled industrial action" which was a real cause for concern;
- * Strikes were a reality in local authorities, especially the more "elusive forms of industrial action" such as "work-to-hours";
- * There was a potential for employers to take trade unions for granted if the right to strike was proscribed; and
- * there was a need to follow international standards by entrenching *all* fundamental labour rights.

A *trade union* respondent noted that the possibility of privatising some local authority services undermined the notion of this "essential service" sector.

Other respondents which chose a limited right to strike, justified this choice on the grounds:

- * That the right to strike should be sanctioned in circumstances where all alternatives had failed. Examples included: a failure of compulsory arbitration, a deadlock in negotiations or that industrial action was "lawful" according to the courts;
- * That a limited right to strike be permitted on the proviso that services were continued;
- * That specific numbers or categories of workers be allowed to strike;
- * That the definition of "essential services" be decided by each local authority rather than the State; and
- * That negotiations be applied as a preliminary step before a strike can be initiated.

Finally, those respondents selecting an *unlimited right to strike* contended that a strike was "the most meaningful tool at the disposal of the trade union". This choice was justified on the grounds:

- * That major substantive issues were prejudiced by excessive employer authority;
- * That the adoption of industrial action by the more militant trade unions was at the expense of other trade unions which followed the course of the law or existing policy process; and

- * That a limited right to strike further complicated the dispute settlement process by means of applying a host of additional conditions.

7.1.6 Overview:

The *State* was divided between prohibiting the right to strike and allowing a limited right to strike for local authority employees. On the other hand, both employers and trade unions favoured a limited right to strike. A variety of reasons were offered for the above choices, namely:

- * Those supporting the prohibition of the right to strike generally contended that such a right would threatened the welfare of the public;
- * Those supporting a limited right to strike suggested that pragmatic considerations undermined its prohibition; and
- * Those supporting an unlimited right to strike stressing the moral obligation of employers to entrench all fundamental labour rights.

7.2 Topic Two: The definition of local authorities as "essential services":

The issue of whether local authorities were justifiably defined as "essential services" was examined.

7.2.1 A background to preliminary findings:

All parties expressed mixed reactions to this issue.

7.2.2 Purpose:

The purpose of this topic was establish the views of the parties with regard to this issue.

7.2.3 Question:

The question was addressed to all three parties. Participants were presented with a statement which explained that local government was defined by the Labour Relations Act (Act 28 of 1956) [since amended] as an "essential service" sector. Respondents were asked whether they agreed or disagreed with the above statement.

7.2.4 Response:

The majority of respondents of all three parties agreed that local government should be defined as *an essential service sector*. The percentage of each party which supported this notion was:

- * The *State* (80%)
- * Employers (70%); and
- * Trade unions (67%).

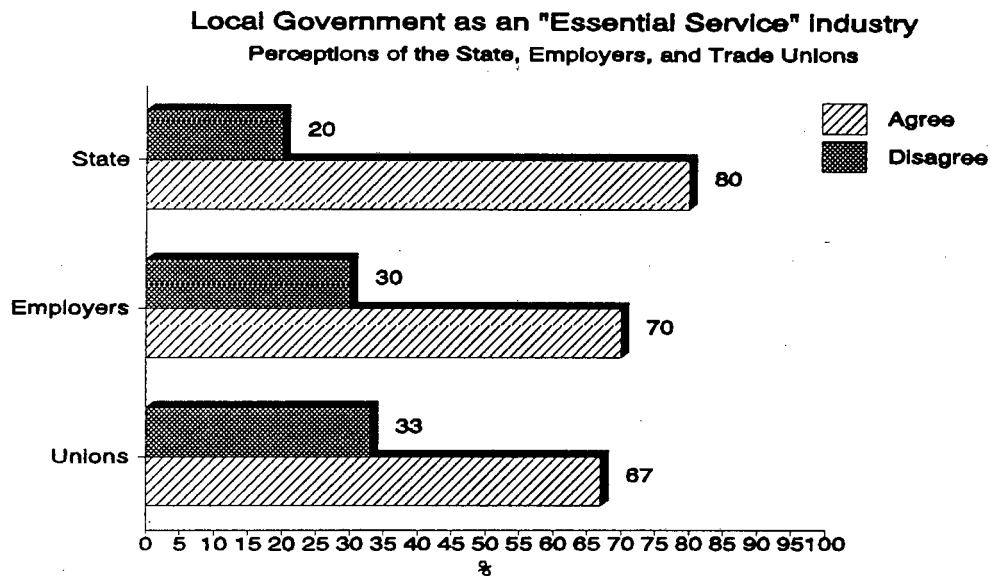
These findings are illustrated in **Table 4** below.

7.2.5 Additional commentary:

Additional commentary can be distinguished by those parties contending that local government was "an essential service sector" and those rejecting this notion.

Many respondents who agreed with the definition of local government as an "essential service" sector justified this choice on the following grounds, namely that:

Table 4.



- * A disruption of local government services, such as fire and ambulance personnel or as a result of burst water mains, electricity failures and traffic congestion, would threaten the community;
- * The provision of, *inter alia*, water, electricity and public transport are basic public rights;
- * The local authority has a contractual obligation to render its services to its residents; and
- * The services provided are monopolised by the local authority and "do not derive profits which can attract private companies".

In some cases, respondents qualified their choice on the basis that certain jobs were not "essential" in the true meaning of the term but that these jobs still broadly fell within the category of an "essential service" (or department).

On the other hand, those respondents who disagreed with this notion justified their choice on the following grounds, namely that:

- * According to the Labour Relations Act (Act 28 of 1956) [since amended] and the proposed Public Service Labour Relations Bill (since passed as Act 102 of 1993), only "certain local government functions could be classified as *essential services*";
- * A number of services provided by local authorities, such as Parks and Recreation, Roads and Library services, could not detrimentally affect the public as suggested by the definition;
- * The determination of "essentiality" was far too subjective bearing on the side of caution rather than fundamental labour rights;
- * A degree of "essentiality" should rather apply;

A *trade union* respondent added the question: "How can grass-cutting be termed essential?".

7.2.6 Overview:

All the parties generally accepted the definition that local government was an "essential service" sector. Those respondents who agreed with this notion qualified their choice on the grounds that a disruption of local authority services would threaten the welfare of the community, undermine public rights and breach the contractual obligation to provide such services. On the other hand, those respondents who disagreed with this definition contended that only certain services could truly be defined as "essential". Rather, these participants suggested that a "degree" of essentiality was preferable to such a definition.

8. Theme Four: Causes of labour conflict.

The following topic was addressed:

- * The causes of industrial action in local authorities.

8.1 Topic One: The causes of industrial action in local authorities.

The causes of industrial action in local authorities was examined.

8.1.1 A background to preliminary findings:

A primary concern to all three parties was the incidence of industrial action in local authorities. In this regard, a variety of strike causes were suggested by various interviewees.

8.1.2 Purpose:

The purpose of this topic was to establish the causes of industrial action in local authorities as submitted by each party.

8.1.3 Question:

This question was addressed to all three parties. Each party was asked to list the causes of industrial action. The State was asked to list these factors in local authorities generally, while *employers* and *trade unions* were asked to list such causes within their local authority's.

8.1.4 Response:

The following lists were provided:

The State:

- * The growth in trade union organisation in local government;
- * An ideological/political shift in worker attitudes with regard to labour rights;
- * The greater "willingness" of local government structures to recognise and bargain with trade unions;
- * Economic and political uncertainty;
- * Compliant or flexible legislation;
- * Excessive trade union intervention at the central level;
- * Bad communications structures within local authority's;
- * A shortage of labour relations knowledge and experience;
- * Unsatisfactory management styles; and
- * Racial friction and intimidation.

Employers:

- * Wages;
- * Bonuses (date disputes);
- * Working conditions;
- * Disciplinary issues;
- * Trade union matters;
- * Grievances against supervisors;
- * Insufficient communication and understanding of all parties;
- * Restructuring plans including rationalisation of the workforce;
- * Inadequate safety provisions in the workplace (notably for higher risk

categories of workers such as traffic police and fire fighters);

- * Transfers of certain individuals;
- * Mass action, intimidation and stayaway calls by the African National Congress/ Pan Africanist Congress/ Congress of South African Trade Unions; and
- * High worker expectations.

Trade unions:

- * Inadequate wages;
- * Poor conditions of service;
- * Telephone tapping by security (and employers);
- * Racial discrimination;
- * Inappropriate job evaluation schemes;
- * Unfair labour practices;
- * Dismissal of officials involved in fraud; and
- * Non-payment of salary adjustments;

8.1.5 Additional commentary:

No additional comments were provided.

8.1.6 Overview:

All three parties listed a range of causes. In summation, these triggers can be contextualised according to:

Environmental factors: The growth and politicisation of trade unions in local authorities; Political and economic uncertainty; Ineffective legislation and unfair labour practices; Conditions of work issues such as wages, trade union matters, dismissals, transfers and

disciplinary issues; Racial friction and intimidation; And, the threat of rationalisation and retrenchment.

Behavioural factors: Inexperience by both parties in handling labour disputes; High worker expectations; employer fraud and non-payment; And, covert operations by employers such as telephone tapping.

Structural factors: A more lenient employer attitude with regard to industrial action; The adoption of collective bargaining practices; Poor communications; And, inappropriate job evaluation schemes.

9. Theme Five: Processes of labour resolution and settlement.

The following topics were addressed:

- * Power driven processes and processes of right; and
- * Processes of interest.

9.1 Topic One: Power driven processes and processes of right.

The measures and approaches applied by local authorities in regulating industrial action were examined.

9.1.1 A background to preliminary findings:

During the preliminary survey a variety of measures for regulating industrial action were described by *employers* and *trade unions*. Initial findings indicated that *employers* preferred to negotiate with *trade unions* rather than to apply coercive measures in the event of the above.

9.1.2 Purpose:

The purpose of this topic was to identify the variety of approaches applied by *employers* in the event of industrial action.

9.1.3 Question:

The question was addressed to *employers* and *trade unions*. Both parties were asked to describe the steps taken within their local authority in the event of a strike. Furthermore, a list of the following possible measures was provided with space for additional commentary:

- * Call for military/police intervention;
- * Seek a Court interdict;
- * Attempt to negotiate;
- * Do nothing; or
- * N/A.

9.1.4 Response:

In general, the response to this question ranged from the provision of detailed steps and measures to the lack of a procedure or plan in this regard. In the case of the former explanation, the following optional steps were listed:

- * Persuading striking employees to return to work;
- * Negotiating with striking employees to return to work;
- * Applying for a Court interdict;
- * Dismissing striking employees;
- * Seeking police intervention in the labour dispute; and
- * Setting an ultimatum for striking workers to return to work.

Some of these measures are illustrated in **Table 5** below.

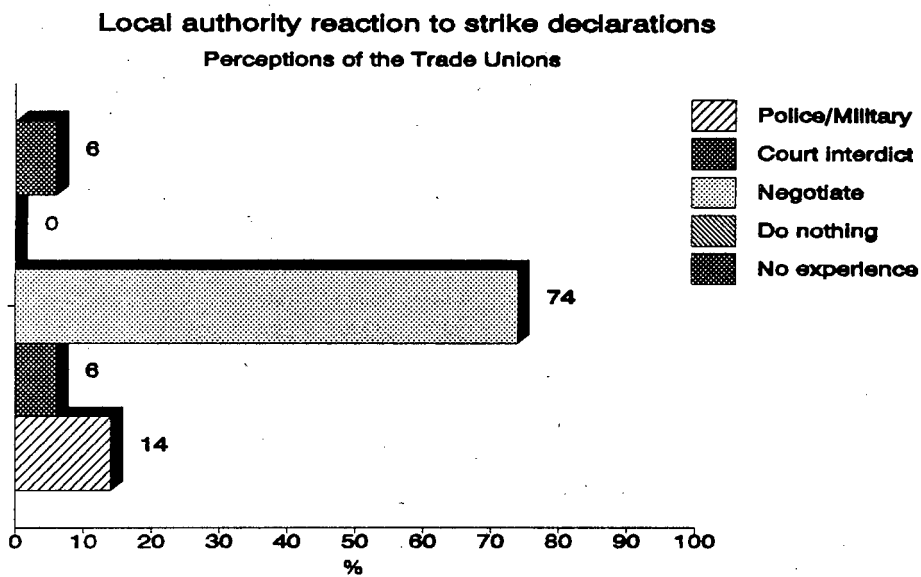
9.1.5 Additional commentary:

Those *employers* who responded that no procedures or plans were applied in the event of industrial action, attributed this to a lack of strike experience.

Those *employers* which applied the above steps added the following commentary:

- * The use of their own security to protect property and non-striking workers;

Table 5.



- * The provision to inform the South African Police not to interfere in the strike;
- * The application of a "no work, no pay" policy;
- * The process of negotiating or persuading trade union leadership rather than attempting to deal with the masses of strikers;
- * The application of a pre-negotiated strike procedure for handling industrial action; and
- * The constant monitoring of the labour relations "system" in order to avoid such an event.

9.1.6 Overview:

A variety of approaches were applied by local authorities in the event of industrial action. In terms of the list provided, the most frequent measure applied, in descending order, was to negotiate followed by police/military intervention and Court interdict.

Other measures which were added to this list included persuading striking employees to return to work, negotiating with striking employees to return to work, applying for a Court interdict, dismissing striking employees; seeking police intervention in the labour dispute and/or giving striking workers an ultimatum to return to work. Some local authorities however, did not have any measures for dealing with industrial action due to a lack of experience in this regard.

9.2 Topic Two: Processes of interest.

The structure of collective bargaining was examined, namely:

- * The negotiation process;
- * Collective bargaining level; and
- * Collective bargaining scope.

9.2.1 Issue One: The negotiation process.

The usefulness of the negotiation process was examined.

9.2.1.1 A background to preliminary findings:

Findings during the preliminary survey indicated a difference of opinion between *employers* and *trade unions* with regard to the usefulness of negotiations within local authorities. *Employers* suggested that negotiations were highly successful and that potential problems could be ascribed to "irresponsible" elements within the *trade unions*. On the other hand, a number of *trade unions* proposed that negotiations were highly restrictive and that *employers* often manipulated the situation by negotiating with certain *trade unions* only.

9.2.1.2 Purpose:

The purpose of this issue was to establish the perceptions of the parties with regard to the usefulness of the negotiation process in local authorities.

9.2.1.3 Question:

The question was addressed to *employers* and *trade unions*. Both parties were asked to rate the relative success of negotiations within their local authority. Respondents were asked to select one of the following scaled items:

- * *Very/Usually successful;*
- * *Normally/ Sometimes successful;*
- * *Hardly ever successful; and*
- * *Not applicable.*

9.2.1.4 Response:

Overall, negotiations were viewed to be:

- * *Normally/ Sometimes successful (58%); and*
- * *Very/Usually successful (42%).*

Neither party rated negotiations as *Hardly successful*.

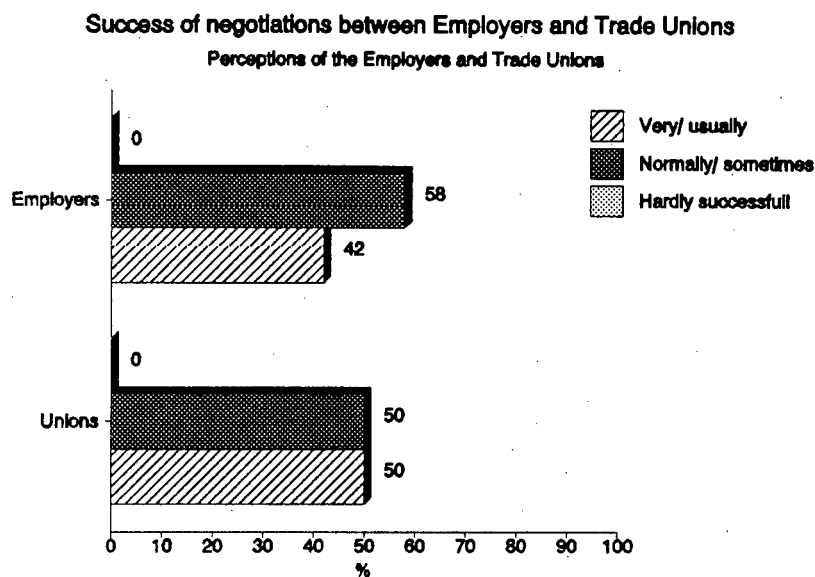
Employers rated negotiations as *Normally/Sometimes successful (58%)* and *Very/Usually successful (42%)*, while both the above views were evenly split (50%) according to *trade unions*.

These findings are illustrated in **Table 6** below.

9.2.1.5 Additional commentary:

An *employer* commented that the negotiations were performed by means of an Industrial

Table 6.



Council. Another *employer* respondent added that negotiations were successful with the "white" *trade unions* only as "black" trade union were not recognised by that local authority.

9.2.1.6 Overview:

Both *employers* and *trade unions* indicated that the negotiation process was usually successful. Neither party viewed this process as hardly successful.

9.2.2 Issue Two: Collective bargaining level:

The issue of the levels of collective bargaining available to parties was examined.

9.2.2.1 A background to preliminary findings:

Representatives of all three parties indicated during preliminary surveys that the level of collective bargaining was a key issue. All parties tended to favour a "mixed bargaining" approach.

9.2.2.2 Purpose:

The purpose of this issue was establish which level of bargaining was preferred by the parties.

9.2.2.3 Question:

This question was addressed to all three parties. Parties were asked to choose the level of collective bargaining they considered most suitable for settling labour disputes in local government. The choices comprised:

- * The *central level*;
- * The *local \ organisational level*; or
- * A *mixture of both* the above levels.

9.2.2.4 Response:

Employer respondents selected in descending order:

- * A mixture of both levels (50%);
- * The local\ organisational level (30%); and
- * The central level (20%).

Trade union respondents selected in descending order:

A mixture of both levels (50%); and
The local\ organisational level (42%).

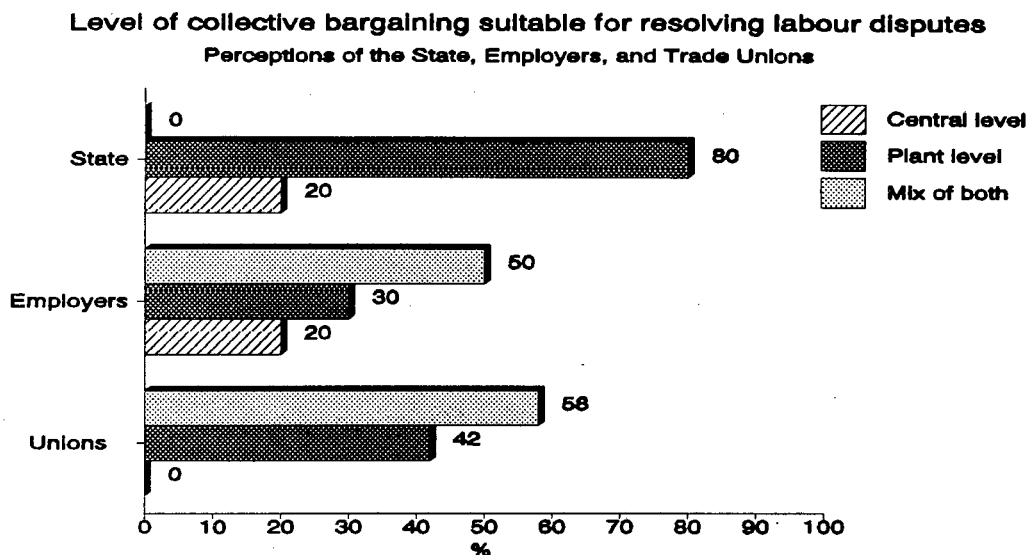
None supported a *central level* of collective bargaining.

State respondents selected in descending order:

The local\ organisational level (80%); and
The central level (20%).

These findings are illustrated in **Table 7** below.

Table 7.



9.2.2.5 Additional commentary:

Employer and *trade union* respondents who favoured a mixed level approach to collective bargaining suggested that bargaining topics could be categorised into "national issues" and "local issues". The central level was contended to be useful for determining national standards for particular topics, while the local level was useful for negotiating these standards within the context of the financial constraints of each local authority. A variety of bargaining topics at both levels were suggested, namely: Wages and conditions of service at the central level, and "dispute resolution", trade union matters, allowances and safety conditions at the local level. An *employer* respondent, added that in the case of wages, a further distinction could be made between minimum wages which were of central concern, and actual wages, which were of local concern.

Parties selecting the plant or organisational level for collective bargaining contended that each local authority enjoyed a variety of unique procedures, policies and circumstances. Examples included, disparate salaries, wages and fringe benefits such as housing bonds.

A number of *employer* and *trade union* respondents further expressed concern with the viability of a central level for collective bargaining. In particular, *employer* respondents stressed the loss of organisational autonomy, while *trade union* respondents noted the potential for larger *trade unions* and federations to unfairly influence the bargaining process.

A *trade union* respondent who selected the central level for collective bargaining concluded that this level ensured, in the final analysis, a more representative and "structured" forum for agreement.

9.2.2.6 Overview:

In general, both *employers* and *trade unions* favoured a mixed level bargaining approach, while the State preferred a central level of collective bargaining. The former trend was qualified further by the categorisation of labour dispute issues according to national and local issues. Respondents favouring a local level approach to collective bargaining suggested that labour disputes in local authorities were generally "domestic" issues. However, respondents favouring the central level approach suggested that there was a need to establish national standards.

9.2.3 Issue Three: Collective bargaining scope:

The scope of topics allowed for bargaining in local authorities was examined.

9.2.3.1 A background to preliminary findings:

Both *employers* and *trade unions* listed a variety of topics which were bargained for within their local authorities.

9.2.3.2 Purpose:

The purpose of this issue was to establish the frequency and scope of topics bargained for in local authorities.

9.2.3.3 Question:

The question was addressed to *employer* and *trade union* participants. A list of bargaining topics, as suggested during the preliminary survey was presented to participants to rate in order of frequency within their local authority. This list comprised:

- * *Wages;*
- * *Conditions of service;*
- * *Trade union rights;*
- * *Disciplinary issues; and*
- * *Dispute settlement procedures.*

9.2.3.4 Response:

The overall response was as follows:

Dispute settlement (25%);

Trade union rights (23%);

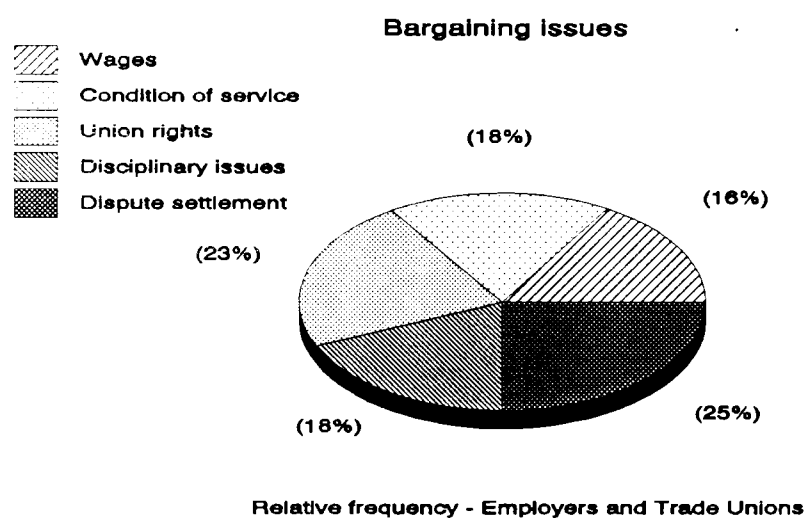
Conditions of service (18%);

Disciplinary (18%); and

Wages (16%).

These findings are illustrated in **Table 8** below.

Table 8.



9.2.3.5 Additional Commentary:

Other issues raised by the respondents included procedural agreements, administrative procedures, redundancies (retrenchment), grievances, recognition agreements and the union/management relationship.

Some participants commented that certain topics were bargained for annually, such as wages and conditions of service. An *employer* respondent also distinguished between the relative bargaining frequency of "whites" and "blacks" in terms of wages within their local authority, with "whites" bargaining more often than "blacks".

9.2.3.6 Overview:

Overall the most frequent topics bargained for were, in descending order: dispute settlement issues, trade union rights, conditions of service, disciplinary issues and wages. A notable feature was the distinction between topics bargained for on an annual basis, such as wages and conditions of service, and on a "needs" basis, such as disciplinary issues.

10. Theme Six: Approaches to labour dispute settlement:

The following topic was addressed:

- * Dispute settlement structures and mechanisms.

10.1 Topic One: Dispute settlement structures and mechanisms.

The usefulness or effectiveness of the available dispute settlement structures and mechanisms was examined.

10.1.1 A background to preliminary findings:

Preliminary findings indicated that parties were divided with regard to the relative usefulness of the available dispute settlement mechanisms and structures.

10.1.2 Purpose:

The purpose of this topic was to establish the relative usefulness or effectiveness of applied labour dispute settlement mechanisms and structures.

10.1.3 Question:

This question was addressed to all three parties. All the parties were asked to rate each of the available dispute settlement mechanisms and structures according to the following scale:

- * *Very effective;*
- * *Effective;*
- * *Average;*
- * *Not so effective; and*
- * *Ineffective/useless.*

This list comprised: Arbitration, Conciliation, Mediation; Works Councils, Industrial Councils, Conciliation Boards and the Judiciary.

The *State* was furthermore asked to opinate on the usefulness of existing dispute settlement mechanisms and structures available to local authorities in terms of securing *a healthy labour relations environment*.

10.1.4 Response:

Overall, the parties rated the mechanisms and structures as follows:

Mechanisms:

- * Arbitration: *Very effective;*
- * Conciliation: *Effective; and*
- * Mediation: *Effective.*

Structures:

- * Industrial Councils: *Very effective;*
- * Judiciary: *Effective;*
- * Conciliation Boards: *Average; and*
- * Works Councils: *Average.*

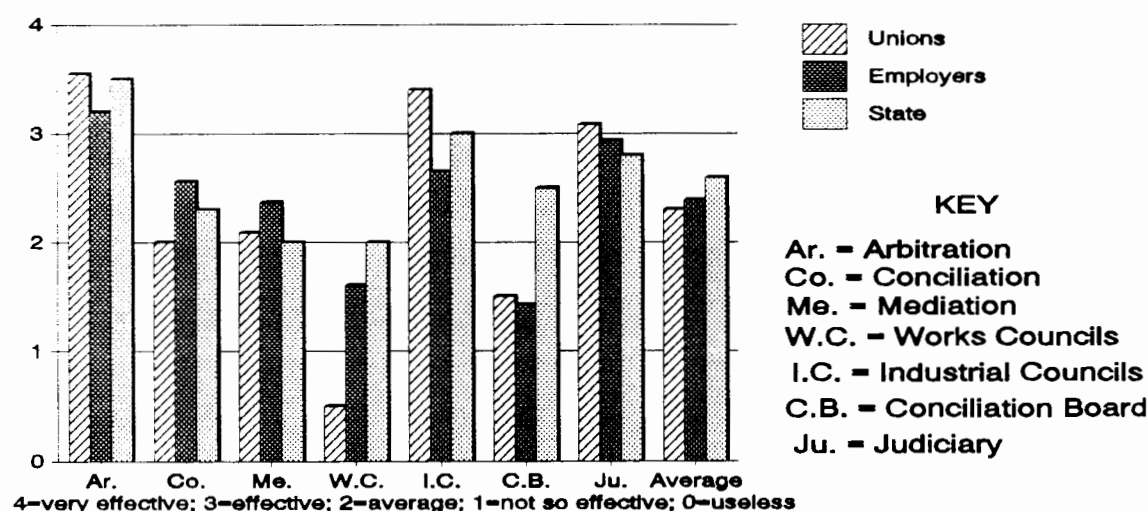
All the parties indicated similar individual scales in terms of dispute settlement mechanisms. However, differences of opinion were expressed with regard to the effectiveness of the listed structures. These differences are illustrated as follows:

- * Industrial Councils: *Very effective* (The State and trade unions); *Effective* (employers);
- * Judiciary: *Very effective* (trade unions); *Effective* (The State and employers);
- * Conciliation Boards : *Effective* (the State); *Average* (employers and trade unions); and
- * Works Councils: *Average* (the State and employers); *Not so effective* (trade unions).

These findings are illustrated in **Table 9** below.

Table 9.

Effectiveness of dispute settlement structures and procedures
Perceptions of the State, Employers and Trade Unions



The opinions of the State with regard to the issue of improving dispute settlement practices in local authorities can be summed up as follows:

The adequacy of existing procedures:

- * In some instances adequate procedures were in place while in others, this was not the case; and
- * The dispute settlement structures and procedures as adopted by local government were still rapidly evolving to "fit the needs of the major labour relations players".

A key problem with existing procedures:

- * A major problem with some mechanisms and structures was the occurrence of excessive time delays for settlement.

Suggestions for improving existing procedures:

- * The introduction of smaller Industrial Councils;
- * Easier access to Conciliation Boards; and
- * The application of specific time periods for dispute settlement.

10.1.5 Additional commentary:

A trade union respondent noted that the dispute settlement process was effective when parties were given the opportunity to select their own mechanisms for settling a dispute.

10.1.6 Overview:

All parties rated arbitration as the most effective mechanism for settling labour disputes

in local authorities. Conciliation and mediation were rated equally also as effective mechanisms in this regard. All the parties rated Industrial Councils and the Judiciary as the most effective structures, while a mixed response was given to Conciliation Boards and Works Councils. Both these latter structures were less favourably perceived by *employers* and *trade unions* than the *State*.

According to the *State*, the existing dispute settlement process was disadvantaged by a lack of stringent "time" discipline, the relative inexperience of both *employers* and *trade unions* and piecemeal approaches to dispute settlement. Measures suggested for improving the dispute settlement process included introducing shorter time requisites for the process, rationalising the size of Industrial Councils and simplifying legal procedures in order to gain easier access to structures such as Conciliation Boards.

CHAPTER NINE

REVIEW AND CONCLUSION.

1. Introduction:

This thesis has described and examined the general nature of labour relations, with particular reference to labour disputes and their settlement in the public sector both internationally and in South African local authorities. This review and conclusion looks at the following topics:

- * An overview of key labour relations features and trends in the public sector internationally;
- * An overview of labour relations and dispute settlement features and trends in South African local authorities;
- * Key findings of labour relations and dispute settlement in South African local authorities; and
- * Some recommendations for improving the labour relations process in South African local authorities.

2. An overview of key labour relations features and trends in the public sector internationally:

Labour relations approaches can be distinguished by a number of frames of reference, namely the Unitarist, Radicalist and Pluralist perspectives.^a In terms of the pluralist frame of reference, *labour relations* can be described as an interactive framework in which the State, employers and trade unions regulate matters of mutual interest. The capacity of employers and trade unions to promote and safeguard such interests is however broadly contingent on the flexibility of the rules of conduct, the degree of trust established between both parties, the distribution of powers and the protection of group interests through civil liberties.^b Labour relations are therefore characterised by the nature of these premises.^c

According to the pluralist frame of reference, conflict is inherent to the labour relationship. Labour disputes can therefore be either *functional* or *dysfunctional*. *Functional* conflict is characterised as a positive dynamic in the organisation because its occurrence engenders new ideas and methods which can improve organisational productivity. On the other hand, *dysfunctional* conflict undermines the organisational process, resulting in a breakdown in services.

Causes of labour conflict can be categorised into environmental, behavioural and structural causes. Environmental causes comprise a range of political, social, economic, legal and organisational factors. Behavioural causes usually involve a range of confrontational dynamics and strategies as applied by the parties in dispute. Structural causes can be distinguished by poor regulatory policies and procedures.

^a Refer to Chapter Two: 3. Frames of reference.

^b Refer to Chapter Two: 5.2 Key premises for conducting the labour relationship.

^c Refer to Chapter Two: 4. Parties to the labour relationship.

A variety of processes can be adopted by either party to resolve or settle labour disputes, namely:

- * *Power driven processes*: Notably industrial action, lock-outs and litigation;
- * *Processes of right*: Notably arbitration; and,
- * *Processes of interest*: Notably collective bargaining, mediation and conciliation.

Other processes include a mixture of the above and fact-finding. For the purposes of statutory dispute settlement procedures, labour disputes are distinguished according to *disputes of interest* or *disputes of right*. The former category is usually settled by means of bargaining or third party facilitation while the latter category is usually settled by third party adjudication.

In the public sector, labour relations are influenced by a number of unique environments.^d Subsequently, these pressures have resulted in a variety of dynamic and independent approaches internationally.^e These systems are generally characterised by the role of parties to the labour relationship and related trends. Notably:

- * The representation of employers by means of elected and non-elected public functionaries and the emergence of employer organisations in the public sector internationally;
- * The rapid growth in public sector trade unionism internationally since the 1960's and 1970's and the wide scope of member interests that are represented;^f and

^d Refer to Chapter Four: 3.4 The public sector environment.

^e Refer to Chapter Four: 4.1 Labour relations models in the public sector.

^f Refer to Chapter Four: 5.2.2.1 Growth in public sector trade unionism.

- * The interventionary role of the State in regulating labour relations in the public sector.^g

In the above context, a key feature of labour relations in the public sector internationally has been the prohibition of certain fundamental labour rights. In particular, these include the *right to associate*, the *right to bargain* and the *right to strike*. In general, their prohibition is grounded on the notion that such rights would inevitably harm the public interest and welfare, which the State was duty-bound to protect. However, this belief has been challenged by a variety of developments internationally, notably a changing management attitude to labour in the organisation, a growing shortage of skills, the need for improved organisational productivity and a need for a pragmatic approach to labour relations.^h These pressures have influenced a number of States to sanction some or all the above rights in the public sector, but usually on a conditional or limited basis.

The manner in which these rights are formally adopted depends on a States conceptualisation of *essentiality*. Subsequently, a variety of definitions regarding *essential services* are applied internationally. These definitions are characterised by their broad interpretation of the above services or by enumeration, which distinguishes between such services. The latter approach is more popular in the public sector internationally.

The causes of labour conflict in the public sector internationally can be attributed, *inter alia*, to:

- * Growing labour frustration and job insecurity;
- * Disparaging workforce conditions;

^g Refer to Chapter Two: 4.2.2 Role of trade unions in the labour relationship.

^h Refer to Chapter Four: 6.2.2.1 Justifying the right to bargain for an explanation of each feature.

- * Proscriptive legislation;
- * Bureaucratised labour relations frameworks;
- * State and employer recalcitrance to a change in the existing *status quo*; and
- * Increased trade union politicisation.

A key feature of the above conflicts in the public sector internationally has been the growing usage of power driven processes, notably industrial action.ⁱ Subsequently, a number of measures have been applied by the State to regulate the incidence of industrial action. These measures include:

- * Criminal or civil law procedures;
- * Penal restrictions;
- * *No strike* agreements with trade unions; and
- * *Self-restraint* or *Joint regulation* schemes.

The above procedures have had varying degrees of success. A relatively recent development in this regard has been the adoption of a *Graduated Strike* approach. This process involves the incremental application of financial pressure in order to force parties to settle their disputes in the shortest possible time. These "fines" can be used to compensate the public in case of public costs being incurred.

Dispute resolution in the public sector usually involves processes of right in the case of *disputes of right*, notably compulsory arbitration with an *anti-strike* clause. Arbitration can be applied by means of *final-offer* and *issue-by-issue* adjudication. However, where the right to bargain is allowed, processes of interest such as collective bargaining can be applied to such disputes. Collective bargaining is often applied in conjunction with or replaced by *Joint Consultation* in the public sector internationally. Other commonly

ⁱ Refer to Chapter Five: 4.1.2.1 Causes of industrial action.

applied forms of dispute resolution include mediation and conciliation.

To sum up, dispute settlement processes are characterised by:

- * Political sensitivities;
- * Detailed and strict regulation of practices;
- * A wide choice of alternative methods; and
- * The prohibition of various fundamental labour rights.

These characteristics have been influenced by a number of international trends, namely:

- * The growing usage of voluntary measures for dispute settlement;
- * A demand for limited State intervention in such processes; and
- * The concomitant demand for independent third party assistance or facilitation.

In the context of this background, an overview of labour relations and dispute settlement in South African local authorities follows.

3. An overview of labour relations and dispute settlement features and trends in South African local authorities:

South African local authorities can be described as decentralised representative institutions or a form of *universitas*, in which group rights and duties are determined. These organisations function by means of vested powers within a specific jurisdiction. Local authorities are also characterised by their relative subordination to the higher tiers of government. To sum up, their purpose is to serve the community within their jurisdiction as efficiently and effectively as possible and to provide for the participation of its inhabitants in the decision-making process. As with other public sector

organisations,^j the services provided by local authorities are influenced by numerous public needs and wants.^k

Labour relations has become an integral function of personnel management in South African local authorities. The recent advent of labour relations as a management function in local authorities during the 1980's is attributed to, *inter alia*, the growth of trade unionism within this sector.^l

Formally, such practices are characterised by their Pluralist construct, but informally, it can be suggested that a Unitarist approach is applied. Within these systems, "employer" interests are looked after by personnel officials while other public functionaries participate in labour relations matters on an irregular basis. A key trend has been the growth in employer organisations whose mission is to safeguard employer interests within the labour relationship.^m The emergence of such organisations can be attributed to the rapid growth of trade unionism in local authoritiesⁿ and therefore the need to deal with labour demands in a uniform fashion. However, not all local authorities are member to employer organisations.

On the other hand, despite the formal repealment of race-based trade union membership, local authority trade unions can be characterised as *de facto* racially distinctive organisations. In particular, independent trade unions or "non-white" trade unions have been at the forefront of militant actions in the face of broader political

^j Refer to Chapter Six: 2.7.2 The composition of the public sector.

^k Refer to Chapter Six: 2.6 The environments shaping local authorities.

^l Refer to Chapter Six: 3.3 Nature of labour relations in local authorities.

^m Refer to Chapter Six: 4.1.2.4. Objectives of employers' organisations.

ⁿ Refer to Chapter Six: 4.1.1.2.3 The growth of trade unionism in local authorities.

repression and their subsequent lack of recognition in many local authorities. Currently, trade unions can be grouped into those organisations which are endemic to local government and those which belong to external labour structures, such as trade union federations.

The States role in regulating labour relations in local authorities has generally been characterised by a variety of principal control measures which determine labour rights and dispute settlement procedures.^o

Labour relations in local authorities are regulated by piecemeal legislation. A key Act is the Labour Relations Act (Act 28 of 1956) [since amended] which broadly defines local authorities as *essential services*. Subsequently, the *right to strike* is prohibited in these organisations. On the other hand, the *right to associate* and the *right to bargain* are sanctioned in the case of recognised trade unions. These rights have led to the adoption of Industrial Councils where bargaining can take place at either the organisational or regional level. However, the bargaining scope can vary and usually includes dispute settlement issues, trade union rights, conditions of service, disciplinary issues and wages.^p Other measures applied for facilitating the dispute settlement process include mediation, conciliation and arbitration. In terms of their usage, arbitration is generally the most commonly applied mechanism.^q

The causes of labour conflict in South African local authorities during the period 1988 to 1992 are broadly analogous to international trends.^r However, additional concerns

^o Refer to Chapter Eight: 6.2 Theme Two: Topic Two.

^p Refer to Chapter Eight: 9.2 Theme Five - Topic Two.

^q Refer to Chapter Eight: 10. Theme Six - Topic One.

^r Refer to Chapter Seven: 2. Causes of labour conflict in South African local authorities.

include the issue of workplace discrimination and racial friction, growing fears of retrenchment in the face of possible service privatisation or rationalisation and the threat of growing unemployment.^s In addition, a lack of management experience with labour relations, the adoption of various confrontational dynamics,^t unviable policy processes and poor communications^u have also undermined this process.

However, despite the availability of the above-noted processes, labour relations in South African local authorities have been characterised by the growing incidence of industrial action. This trend can be shown by the increased costs incurred as a result of industrial action during the period 1988 to 1992^v and the nature of conflict triggers such as wages, work conditions, discipline, trade union matters and other related issues^w. In this context, labour disputes leading to industrial action are usually resolved by a negotiated settlement, and failing this, the application of Court Interdicts, employee dismissals, lock-outs, police intervention, ultimatums and "persuasion".

4. Key findings of labour relations and dispute settlement in South African local authorities:

In conclusion it is submitted that the labour relations approach applied by South African local authorities has failed to institutionalise labour conflict effectively. A critical look at this failure follows. However, before doing so the rationale to this critique is summed up.

^s Refer to Chapter Seven: 2.1 Environmental factors.

^t Refer to Chapter Seven: 2.2 Behavioural factors.

^u Refer to Chapter Seven: 2. Causes of labour conflict in South African local authorities and Chapter Eight: Theme Four: Topic One.

^v Refer to Chapter Seven: 4.1.2.2.5 Costs of industrial action (1988-1992).

^w Refer to Chapter Seven: 4.1.2.2.4 Overview of industrial action triggers.

As noted previously, conflict is *inherent* to labour relations. Therefore, the purpose of labour relations is to institutionalise conflict in a manner which makes it *least costly* to the organisation. International trends in the public sector show that an increase in the incidence of industrial action is usually attributed to the application of coercive labour relations practices. Such practices are characterised by the lack of effective trade union participation in the labour relations process. Subsequently, it is submitted that an adversarial or power-driven approach to labour relations undermines its sense of purpose. Therefore, it is concluded that a consensus-driven approach, founded on the notion of justice, is integral to the labour relationship.

The application of an adversarial labour relations approach in South African local authorities has failed to institutionalise labour conflict effectively. The key aspects of this failure will be critically described in context of the following four premises:

- * The lack of flexible or consistent legislation;
- * The lack of commitment by the parties to the labour relationship;
- * The inequitable distribution of powers; and
- * The inadequate safeguards for protecting group interests.

The lack of flexible or consistent legislation:

The application of complex and inconsistent labour legislation has undermined the purpose of labour relations processes in South African local authorities.

Piecemeal legislation has often confused parties to the labour relationship about their actual rights. In particular, this legislation has complicated the dispute settlement system by entrenching elaborate and time-consuming procedures which, in addition to a lack of management or trade union expertise, obscures rather than streamlines the labour relations process.

Labour Court findings are also often inconsistent with the applied legislation. A notable example of the above is the issue of the right to strike for local authority trade unions. As noted previously, this right is prohibited for such parties on the grounds that local authorities are *essential services*. However, recent Labour Court findings have challenged this notion which has resulted in further dissension by the parties with regard to due process.

Lack of commitment to the labour relationship by both parties:

A key aspect of labour relations is the degree to which both parties are *committed* to the labour relationship. A lack of commitment by such parties undermines the viability of the labour relations process. In South African local authorities, the *lack of commitment* by both parties can be characterised by mutual suspicion and distrust. This attitude has led to the adoption of confrontational strategies during labour relations interactions.

From the trade union perspective, the lack of trust can be attributed to Government illegitimacy. Local authorities were seen to reflect the values and policies of an "illegitimate" State. In addition, labour relations policies were characterised by their adversarial nature, especially towards "non-white" or "independent" trade unionism. Subsequently, a key feature of these trade unions in local authorities has been their politicisation of labour demands and the adoption of industrial action as a vanguard for such expression.

On the other hand, employers are suspicious of trade union motives, notably by the increased incidence of industrial action and the often "irresponsible" nature of labour demands. Although the majority of employers try to negotiate in order to settle disputes, their subsequent refusal to recognise certain trade unions and adoption of confrontational or "persuasive" tactics, continues to engender distrust.

Inequitable distribution of powers:

From the employers perspective, local authorities have the duty to serve and protect the communities welfare. This purpose requires *control* over the processes which ultimately serve these objectives. A key labour relations concern is therefore the "threat" of trade unionism to the *status quo* of the State, as employer, and its capacity to serve the public effectively. This fear has been precipitated by the rapid emergence of trade unionism within this sector and the nature of labour demands placed before employers.

Trends which have led to a growth in public sector trade unionism are attributed to a change in the perception that it is an "honour" to work for the State. This view was undermined by the stark realities of public sector employment where, in comparison, private sector employees enjoyed relatively better benefits and the recognition of some or all fundamental labour rights.

Subsequently, local authority trade unions have demanded equitable powers in order to redress grievances in a *fair* manner. In particular, this trend involves a demand for fundamental labour rights. However, although the right to associate and bargain are recognised in these organisations both rights are encumbered by a variety of restrictions. For example, the right to associate includes a converse right for employers to deny trade union recognition. This restriction therefore limits the capacity of "unrecognised" trade unions to represent member interests within an institutional labour relations framework. Similarly, the right to bargain is circumscribed by the narrow scope of bargaining topics allowed.

As noted above, the right to strike is prohibited in South African local authorities. This right is viewed as a keystone of trade union power therefore its prohibition is contentious and, it can be argued, undermines the principle notion of equity within the labour relationship.

The lack of protection of group interests:

The lack of group interest protection by the largely consultative, or limited, negotiating role which trade unions play during the conciliatory process has undermined the labour relationship. Subsequently, the adoption of *independent* dispute settlement mechanisms is a feature of labour relations in South African local authorities. This approach can be seen in the popularity of voluntary arbitration procedures which are performed by an independently chosen third party. Notably, the selection of the arbitrator is accomplished by means of mutual consensus which the disputants apply in order to ensure that the process of protecting member interests is done in *the fairest manner possible*.

Subsequently, labour dispute settlement procedures which involve the intervention or participation of the State are less effective due to the questionable legitimacy of such outcomes.

5. Recommendations for improving the labour relations process in South African local authorities:

As can be seen by the above issues, labour relations in South African local authorities are encumbered by various limitations. In this context, a number of recommendations can be made for improving the labour relations process in this sector, namely:

** Accommodating trade union interests:*

Trade union interests have to be accommodated in order to ensure a viable labour relations system. This involves the fundamental recognition of key labour rights which in the context of South African local authorities includes the right to strike. However, in conjunction with these rights a need to balance such powers is crucial. Subsequently, it is submitted that a limited right to strike ought to be sanctioned. The nature of restrictions or constraints of this right should account for a procedural balance which ensures that a process of interest or rights is followed before such a right can be sanctioned. Key

considerations include:

- * That services affected do not harm the public. This can be done by drafting a code of conduct and establishing a fact-finding body to check the effects of a strike on the community;
- * That the right to strike provides for a manageable timetable of procedures for settling such a dispute;
- * That the right to strike is restricted to certain employees as determined by the mutual consent of trade unions and employers beforehand; and finally,
- * That in the event of industrial action, a *Graduated Strike* approach be adopted^x.

* *Simplifying existing legislation:*

As noted above, complex legislation has undermined the labour relationship by confusing the parties in the process about their rights. Subsequently, there is a need to simplify labour relations procedures and, at the local level, policies which regulate such procedures.

* *Reorganising structures:*

The need to establish streamlined structures for resolving disputes is crucial for effective labour relations. Current disadvantages or hindrances include poor communications and limited processes for mutual consensus. Suggestions for improving these inadequacies involve:

^x Refer to Chapter Five: 4.1.3.3.5 The *Graduated Strike* approach.

- * More frequent communications between both parties, preferably through permanent "working group" structures;^y and
- * Ensuring that outlets exist for complaints.

* *Developing trust:*

Finally, the key element which underscores the *process of mutual consensus* and a viable labour relations system is the development of *trust*. However, trust is contingent on the attitudes and willingness of parties to submit their differences. Trust therefore depends on a recognition by parties that mutual suspicions must be forgone and confrontational dynamics stopped in order to ensure a viable labour relations system based on the notion of consensus. As Bendix & Swart (1982:8) conclude:

"As always, the only alternative to the rule of war is the rule of law, and where law cannot be imposed by tyranny, it must be sustained by consent."

^y Refer to Chapter Eight: 6.1.5 Additional Commentary.

CHAPTER ONE

ENDNOTES

1. The term *labour relations* is applied rather than *industrial relations*, unless otherwise specified, on the grounds that local government is not an industry (Poppleton, 1985:3).
2. An *organisation* can be described as "a structured interrelationship among individuals and groups as they cooperate to fulfil a predetermined objective" (Morrow, 1980:4). Furthermore, in terms of interest groups, Schattschneider (in Morrow, 1980:4) describes organisations as the "mobilisation of bias".
3. 15 Grades of local authority's were listed by the Classification of Local Authority's According to Grades in the Government Gazette, No. 9462 of 19 October 1984. Grades are established according to a statistical formula which is based on 13 individually-weighted factors. Examples include local authority income (25%), Erven (15%), Electricity meters (12%), water meters (10%) and sewerage points (10%).
4. The delphi questionnaire themes are described in Chapter Eight.
5. Fixed-alternative items ask for "yes-no" or "agree-disagree" answers, and are *closed* or *poll* questions. *Scale* items require a degree of response according to a pre-determined scale, and in conjunction with other related data or *open-ended* questions, measure the attitude of participants to key issues. (Kerlinger, 1975:484-485)
6. This period was selected because of the extensive statistical literature available for this period, as similarly applied in some parts of the delphi questionnaire.
7. Kerlinger (1975:134) describes interpretation as finding an explanation or meaning.

CHAPTER TWO

ENDNOTES

1. The Industrial Relations Systems theory was pioneered by John Dunlop in the early part of this century. For a further insight into the historical evolution of this management function see Bendix (1989:13).
2. The advisory role can be facilitated by means of Liaison Committees for employer-union interaction (Childs, 1987:74).
3. Consensus can be defined as "a tacit agreement on the procedures as well as a broad agreement on basic values, norms and standards" to be applied. (Presidents Council Report, 1990/1:2)
4. Childs (1987:74) also describes the *State Unitarist* perspective which acknowledges the right of employees to associate on an advisory basis.
5. Foucault (in Wood, 1987:252) asserts that modern strategies of domination by the State are characterised by token "illusive" freedoms granted to trade unions within the labour relations process.
6. According to Coetzee (1985:143) this function is the dominant source of power for employers in the labour relationship.
7. The division of loyalties or "management fragmentation" can undermine employer rights and duties through poor representation or divided interests (Windmuller & Gladstone, 1984, Lewin, D. *et al.*, 1988). Factors contributing to this matter include "personal prejudice, poor communication practice [or] diverse individual management style" (Poppleton, 1985:7).
8. The role of trade unions in the labour relationship can also be characterised by the collective, individual, economic, social and psychological needs of their members (Alfred, 1984:26; Du Toit, 1976:6).
9. On a satirical note, Adam Smith in his publication, An enquiry into the nature and causes of the wealth of nations (1937) described trade unions as surreptitious organisations seeking to foment some plot against the populace:

"People of the same trade union seldom meet even for merriment and diversion, but the conversation ends in a conspiracy against the public, or some contrivance to raise prices." (Fick & Hugh High, 1987:27)

10. Other key factors influencing the capacity of trade unions to address employee needs include, their structure, the degree of centralisation or decentralisation of processes within the labour relationship and the source of trade union power (Bendix & Swart, 1982:9).
11. A critical issue in this regard is the degree to which "voluntarism" is allowed, where parties enjoy the freedom to select their own methods for settling disputes.
12. The recognition agreement is a "formal procedural structure" which governs the conduct of parties in a bargaining relationship (Bendix & Swart, 1982:3). Douwes Dekker (n.d.:40) makes the observation that a recognition agreement lends an air of legitimacy to the labour relationship.
13. Bendix (1989:73) cautions that police should be called in "only in extreme circumstances and ... only for the purpose of public protection or to prevent individuals from harming one another".
14. "If the inherency of conflict between capital and labour is acknowledged, then a degree of institutionalisation, through agreed *rules of the game* to facilitate interaction and effect temporary reconciliation is required." (Douwes Dekker, 1990:294)
15. The lack of rigour in labour legislation can also be shown by the jurisprudential dilemma of having to choose between the legitimacy of a former employment contract (*pacta sunt servanda*) and a newly negotiated collective arrangement (Kahn-Freund, 1977:48).
16. For example, a trade union representing highly skilled professionals can have a greater impact on the organisation than a larger trade union representing the interests of mostly unskilled workers.
17. Kahn-Freund (1977:22) further distinguishes between "traditional" (employer) and "reactive" (trade union) powers where the "individual worker is subordinated to the power of management but that power of management is coordinated with that of *organised labour* (own emphasis)".
18. A more detailed explanation of *rights* can be found in Ben-Israel (1988:4-30) and Kahn-Freund (1977).

CHAPTER THREE

ENDNOTES

1. However, both the Unitarist and Radicalist frames of reference provide different explanations for conflict.

Unitarists contend that conflict and industrial action can be largely attributed to "agitators" or "intimidators" opposing consensual or consultative processes on an "anti-establishment" basis. Conflict is therefore regarded as an aberration, and strike action as a manifestation of organisational disloyalty, even seditiousness, to the State. (Bendix, 1989:14; Wood, 1989:49).

On the other hand, Radicalists propose that conflict is the outcome of fixed and irreconcilable differences between employers and employees within any capitalistic system. This is ascribed to "the appeal of new world views" (Hyman, 1975:177). Strikes are subsequently viewed as a struggle by workers in "non-Marxist States" against the "broader relationships of control". (Aaron, Najita & Stern, 1988:227; Bendix, 1989:16; Childs, 1987:74; Du Toit, 1976:33; Savchenko, 1987:147; Wood, 1989:52). In Marxist States, conflict is viewed as a manifestation of "individual misbehaviour" or "violations of the law or socialist morality" (Hethy, 1989:115).

2. On this note, Douwes Dekker (n.d.:41) jibes: "Industrial peace is more surprising than industrial action".
3. In this context, Hernandez (1983:10) lists four factors which can be applied for determining wage levels:

- * Wage rate comparisons;
- * Employers ability to pay;
- * Existing productivity levels; and
- * Cost of living and changes.

4. Ironically, Freeman (1986:51-2) suggests that the occurrence of strikes during poor economic conditions may not necessarily meet with the disapproval of the employers. He notes:

"Because public sector as well as private sector employers "save" labour

costs when struck, public employees (*sic*: "employers") may be more willing to take strikes because they 'make money' during a strike. This further reduces the economic power of unions in dispute."

5. For a description of environmental turbulence and its impact on policy application, see Terreberry (in Baker, 1973:178-195) and Warwick (1974:100-118).
6. According to Farber & Bazerman (1987:349-351), the divergence of expectations can be shown in three models:
 - * *The Asymmetric information learning model*: shows that disagreement is caused by parties as a tactical measure for learning as much as possible about each other during the course of the bargaining process;
 - * *The model of Commitment*: shows that disagreement is the outcome of formal commitments made by parties to a particular bargaining position beforehand; and
 - * *The strategic third party behaviour or salience of possible rewards model* shows that disagreement is caused by the high expectations of one or both parties to a possible third-party settlement.
7. The level at which collective bargaining takes place can cause conflict. For example, it is suggested that centralised bargaining can lead to high worker expectations due to a perceived increase in power. Subsequently, a failure to fulfil these workers expectations could trigger conflict in the workplace (Hyman, 1975:166). On the other hand, decentralised bargaining could suffer the same fate due to wide discord, a lack of uniformity and piecemeal trade union representation in the bargaining process (Hernandez, 1983:7).
8. Poor communications within the organisation can foster misunderstanding and distrust within the labour relationship (Wood, 1989:57). Conflict can therefore be manifested by competition for limited resources, dependence in cooperation, desire for autonomy, change in the relative status of parties and role conflict (Van den Bos, 1989:n.p.)
9. See International Labour Office (1986:71) for examples.
10. In this context *strikes* refer to all forms of industrial action.

11. On the other hand, where such strikes are sanctioned as part of a legitimate process then they are classified as *legal, constitutional* or *procedural* forms of industrial action (Bendix, 1989:218).
12. However, Rycroft & Jordaan (1990:216) query whether voluntary *overtime-bans* can be defined as a form of industrial action.
13. Hernandez (1983:1) notes that a clear distinction ought to be made between *perceived triggers* and other *possible underlying causes*.
14. However, Bendix (1989:225) warns that in reality the lock-out may prove disadvantageous in the case of large-scale strikes to employers due to the enormous expense encumbered by closing down operations as well as its reciprocal effect on costs of production or service.
15. The italicised quote is adapted from a definition of *negotiation* as submitted by Horwitz (1991a:76).
16. For other useful definitions of collective bargaining see Shafritz (1975:43), Trollip (1990a:22) and Kahn-Freund (1977:17).
17. For example, Feigenbaum describes collective bargaining in the context of one-on-one negotiation as "a system of bilateral determination of important personnel and working conditions" (in Shafritz, 1975:42). Jowell (1989:77) on the other hand, simply refers to collective bargaining as a "voice mechanism".
18. Hethy (1989:117) describes collective bargaining in this context as "a major instrument to prevent labour disputes and conflicts".
19. Nominally determined by in-house bargaining procedures (Horwitz, 1991a:66).
20. Adversarial tactics are used to give a party the best possible opportunity to realise their goals. Examples of such tactics include:

- * Delimiting an opponents goal setting process by means of manipulation, persuasion or conditional sanction; and

- * Modifying an adversaries environment through "public opinion, legislation, contracts, cooperation, readiness on behalf of the adversaries opponents, organisational structures, and physical factors (i.e. mobility, and access and availability constraints)".

(Dlugos, Dorow & Weiermair, 1988:113)

21. A related concern, for trade unions in particular, is the possibility of a dissipation of powers due to an excessively large number of representative units within the bargaining forum. This complicates the purpose of bargaining, i.e. that of finding a common ground between disputing parties. (Klinger, 1980:341; Stone, 1989)
22. According to Lewin, D. *et al.* (1988:355) the desire for mediatory intervention is a tacit acknowledgement by parties that they are willing to compromise.
23. The mediator may also be referred to as a "facilitator" (Independent Mediation Society of South Africa, 1985:1).
24. If disputing parties cannot agree on a mutually acceptable mediator or agency, each party may then appoint their own representative to mediate on their behalf (Bendix, 1989:208).
25. This can be achieved by correctly diagnosing and not disclosing the underlying issues or concerns of the parties, thereby assisting in the process of gaining their trust (Bendix, 1989:207-8).
26. A key attribute is the mediators ability to refrain from imposing ideas or solutions on the parties, except in the situation where *directive strategies* may become necessary (Bendix, 1989:207-8).
27. See Bendix (1989:368-70) and Gerber, Nel & van Dyk (1992:420-1) for some useful descriptions of Industrial Council structures and functions.
28. Of all these approaches, Treu, T. *et al.* (1987:29) conclude that those mechanisms allowing for negotiation or arbitration are most popularly applied internationally.

CHAPTER FOUR

ENDNOTES

1. Other useful definitions of *administration* include:

"A group effort designed to attain group goals at the least cost of time, money, material or discomfort" (Koontz & O'Donnell, 1968:6)

"The pursuit of mutually desired goals by, with and through people, acting together." (Van den Bos, 1989: n.p.)

"All those processes that contribute to the efficient implementation of a predetermined goal or policy." (Morrow, 1980:1)

2. A background of the paradigmatic development and status of *public administration* is provided by Gildenhuis (1988:135-143). With regard to South African developments specifically, refer to Gildenhuis (1988:145-150).
3. Public policy is described by Dye (1987:3) as "whatever governments choose to do or not to do".
4. A number of other definitions of *Public Administration* are frequently applied. These include:

- * "The formulation, implementation, evaluation and modification of public policy."

(Cutchin, 1981:79)

- * "[A] conscious directing of the activities undertaken by members of governmental institutions in pursuit of an agreed objective, which will contribute to the satisfaction of specific community needs and the betterment of the general welfare of the citizenry."

(Rabie in De Wet, 1987:13)

- * "Policy execution and also policy formulation."

(Fesler, 1980:2)

- * "A continuous struggle to achieve a precarious balance amongst a bewildering variety of pressures exerted on a society, in order to provide an acceptable way of life for the majority of the members of that society."

(Van den Bos, 1989:n.p.)

- * "The application of organisational, decision-making, and staffing theory and procedures to public problems."

(Vocino & Rabin, 1981:4)

- * "The composite of all the laws, regulations, practices, codes and customs that prevail at any time in any jurisdiction."

(White, 1955:2)

5. Countries favouring a "public management" approach include Australia, Canada, New Zealand, United Kingdom, and the United States (Brynard, 1992; Treu *et al*, 1987:220). In part, this may have prompted the adage that "the field of administration is a field of business" (Denhart, 1984:43).
6. For a more detailed description of key elements of public management see The Mushkin Report in Golembiewski & Gibson (1983:2).
7. According to Treu *et al* (1987:4), the public service is characterised by "the nature of the employer organisation, service or institution".
8. In this context, Gildenhuis (1983:31-32) contends that a *quid pro quo* does not necessarily follow for taxpayers. This is based on a *non-exclusivity* principle which simply suggests that services made available to the public must also benefit those who are not taxed.
9. Otherwise coined the *equity principle* where services are provided at cost.
10. The debate over the relative role and impact of the political environment upon the efficiency of the administrative process has been dogged by debate since Woodrow Wilsons' "The Study of Administration" published in 1887 (Nigro & Nigro, 1980:7-8). Some useful readings on this matter include:

- * Dunsire, A., Administration: The Word and the Science.

United Kingdom: Martin Robertson, 1973. (See Chapter Six: The American Science of Administration - Wilson and the politics/administration dichotomy and Chapter Ten: Public Administration and "Private Administration")

* Morrow, W.L., Public Administration: Politics, Policy, and the Political System. New York: Random House, 1980.

* Nigro, F.A., & Nigro, L.G., Modern Public Administration. New York: Harper & Row, 1980.

11. This is underscored by the public pressure on the State to demonstrate its commitment to the community. Subsequently "the difficulty of government work is that it not only has to be well done, but the public has to be convinced that it is being well done". (Forrestal in Corson, 1952:124)
12. In the United Kingdom for example, the introduction of a centralised labour policy framework for public employees by the State, was the outcome of strongly divided union loyalties regarding employment issues (Treu, T. *et al.*, 1987).
13. However, in the United Kingdom for instance, elected local government officials deny any undue "party political" influence with regard to labour relations (Winchester in Treu, T. *et al.*, 1987:232).
14. Commonly coined the *responsibility ethic*, this "duty" by the State is often contested by public sector trade unions (Rhodes, 1985:303).
15. Imposing a wage freeze is one of the many options available to a government for curbing public employee expenditure. Other methods include, a denial of merit increases or *cost-of-living* adjustments, restricting *step* increases in promotion, and restructuring fringe benefits. (Hays & Kearney, 1983:193)
16. Heneman & Schwab (1978:275) submit that the underlying theoretical difference "between labour laws governing the public sector versus labour laws governing the private sector" is the "character of public employment".
17. This trend is echoed by Garret (1972:234):

"No management function in industry has undergone greater changes in recent years than personnel management"
18. De Wet (1987:14) describes the process of establishing personnel policy as follows:

"A personnel policy has to be formulated and implemented in any institution, funds have to be made available for salaries and staff expenses, staff structures have to be established within which staff can work, staff have to be appointed to carry out the personnel function and work procedures are necessary for staff to work in an orderly manner, and all these functions and activities of staff have to be controlled to ensure that predetermined goals are achieved."

19. According to Feigenbaum merit based processes in the public sector are crucial for ensuring the best possible staff for the job, whereby "the conditions and rewards of performance contribute to the competency and continuity of the service" (in Shafritz, 1975:42).
20. As Weiler (1980:239) explains:

"From the point of view of the union, the general public is not an innocent, uninvolved bystander in the dispute between the government employer and its union. The public is the employer. It is the interests of the public that are being advanced at the other side of the table, either as consumers of the services who want to maximise employee production, or as taxpayers who want to minimise labour costs".
21. Employer associations have also been characterised by a more proactive approach to labour relations (Shaw & Clarke in Lewin et al, 1988:148). Examples of these trends in local government can be found in Australia, Denmark, Germany, Sweden & the United Kingdom. (International Labour Organisation, 1989a:109-110)
22. This declaration was ratified by several countries, such as Poland and the United Kingdom (International Labour Office, 1986:71).
23. A change in government (through elections or otherwise) often led to a new governments inheritance of "disagreeable" public labour policy which led to its reformation often to the disadvantage of trade unions. (International Labour Organisation, 1989a:111)
24. In Venezuela, representation is further distinguished according to skill levels; Trade unions (nominally unskilled and semi-skilled labour), associations (skilled labour) and professional colleges (specific professions) (International Labour Organisation, 1989a:112).
25. The *Federacion de Sindicatos de Trabajadores al Servicio del Estado*.

26. The Statute applied in Mexico is the *Statute of Public Service Employees* or *Estatuto de los Trabajadores al Servicio del Estado*.
27. In Malaysia local government unions specifically represent the employees of each local authority, prohibiting any other form of membership.
28. See Winchester (in Treu, T. *et al.*, 1987:220) - government desire for greater efficiency and resulting centralisation over the labour relations process and Treu, T. *et al.* (1987:13) in the case of local government.
29. In this context it is contended that in the event of industrial action, employers would essentially benefit through *savings* on wages and salary costs, while the associated expense of such a strike would be more than likely financially prohibitive for trade unions (Freeman, 1986:49-52).
30. "The fact that government may be elected ... does not normally entitle it to conscript the assets or services of individuals or firms which the public would find useful. Instead, it has to negotiate a voluntary agreement on terms which ultimately depend upon its relative bargaining position." (Weiler, 1980:216)
31. This trait is based on a variety of international findings, such as those of Lieberman (1980:160) who came to this conclusion with regard to the Canadian public sector.
32. See Methe & Perry in Freeman (1986:62) and Lewin *et al.*, (1988:516) on public sector productivity findings in the United States of America.
33. See Treu *et al.* (1987:15) for examples of the frequency of informal bargaining practices in the public sector of International Market Economy Countries.
34. Consequently, the use of "some kind of co-ordination between negotiations in the private sector and public service" has been suggested by some trade unionists (International Labour Office, 1986:35).
35. Treu, T. *et al.* (1987) contend that in some countries collective bargaining remains a mere formality, largely seen as a measure for co-opting labour by means of the complex and time-consuming procedures applied and limited bargaining scope.
36. It is submitted by Lieberman (1980:24) that public apathy to broader public issues has been largely ameliorated by collective bargaining practices because of the potential impact bargaining arrangements may have on the affairs of the public.

37. In this regard, Morris (1986:190) counters the suggestion of judicial neutrality by asserting that even in the process of resolving disputes, government departments who decide on labour matters can influence court decisions, thereby making such institutions a "rubber stamp" of the government.
38. In this context a further benefit of this right is the "psychological threat" it poses on parties to find agreement and refrain from continued intransigence (Lewin *et al*, 1988:330; Lieberman, 1980:27; Linder in Douwes Dekker, n.d.:73; Weiler, 1980:218).
39. According to Heneman & Schwab (1978:276) the real damage of prohibiting a right to strike in this context is a disrespect for the law. Subsequently, Morris (1986:186-234) argues that in practice the notion of the *legal status of industrial action* in the public sector is often contingent on *judicial discretion*. In conclusion, Thomas (1989:143) submits that "no ban on official action would be able to guarantee that there would not be a corresponding increase in unofficial action or *guerrilla warfare*".
40. It can be noted that *public officials*, more so *political office bearers*, "represent the public rather than special groups" (Wissink in Fox, Schwella & Wissink, 1991:199).
41. An example is the former Soviet Union which espoused the lack of a divergence of interests between management and labour and therefore improbability of strikes (see International Labour Organisation, 1989a:121 - former Soviet Union).
42. For example, in Australia public sector strikes continue to arise as a form of custom despite their proscription (Pillay & Bendix, 1993:46).
43. As Pillay & Bendix (1993:45) explain:

"The right to strike is not a delegation of authority to workers to fix their own wages. Political, economic and social costs impact on both the State and its workers during collective bargaining."
44. Senior officials.
45. The specific time-length was not specified.
46. In Sweden this arrangement is entrenched by the Special Basic Agreement for the Public Sector Act (International Labour Organisation, 1989a:122).

47. Public opinion may not necessarily be "commensurate with the essentiality of the service or services concerned but rather with the degree of inconvenience caused by the strikes" (Boshoff & Bendix, 1993:37).
48. This trend is reflected by Benjamin Arnold (in Morris, 1986:9) who noted:

"The concept of essentiality is not an absolute, capable of being defined by purely objective criteria; rather its meaning varies according to subjective group interests and political expediency." (Benjamin Arnold in Morris, 1986:9).
49. Observations made by the Green Paper on Trade Union Immunities (1981), issued by the Department of Employment in the United Kingdom concluded:

"The interdependent nature of industry means that a case can now be made for regarding a strike by most groups of workers as threatening essential services or supplies." (Morris, 1986:190)
50. For example, in New Zealand and the United Kingdom the police and armed forces are proscribed from striking. (International Labour Organisation, 1989a:121).
51. Morris (1986:189) also suggests that this alternative has a far more beneficial effect than "subjecting disputes to compulsory arbitration in an *ad hoc* basis" by causing less resentment.
52. This is the view of the Committee of Experts (Christie, 1992:21) and the Commission for the Freedom of Association (Ben-Israel, 1988:112), both bodies of the International Labour Organisation.
53. For example, in Italy the conditions referred to in defining "essential services" include "environmental, economic, technological, political, cultural and social factors which vary in place, time and content" (Pillay & Bendix, 1993:54).

CHAPTER FIVE

ENDNOTES

1. In South American countries, for instance, the imposition of unilateral government policy in the 1980's triggered general industrial strife. These measures were applied to curtail inflationary spirals as a result of the worldwide recession. However, a return to the "normal operation of labour relations machinery and the loosening of pay restraint programmes" led to a decline in labour disputes. (International Labour Organisation, 1989a:105,116-117)
2. *Public will* can be described as the fear that a change in policy may undermine public well-being (Morris, 1986:198).
3. It can be noted that public sector legislation is distinguished by administrative or public law (Treu *et al*, 1987:35).
4. As Heneman & Schwab (1978:276) explain:

"Permitting public employees to strike, or more accurately not placing a prohibition on work stoppages, would seem to imply that legislators were condoning the disruption of governmental services."
5. For related discussion on legal factors contributing to labour conflict refer to Balfour & Holmes, Fallon, Klauser, Stern & Olson in Freeman (1986): Affect of legal penalties and labour rights on the dispute incidence; Ichniowski in Aaron, Najita & Stern (1988): Study on Police strikes; and Aaron, Najita & Stern (1988): Comparison of legal and illegal strike incidence in the public sector.
6. Treu *et al* (1987:7) note that international strike trends in the public sector during the period 1984-1987 were mostly attributed to restrictive government policies which undermined the labour rights.
7. With regard to similar findings within the public sector, Lieberman (1980:34) observes:

"When public employees strike, other public employees in the same area are interested observers. If they see that a strike is successful - or that it does not result in any dire consequences to the strikers - they have an incentive to strike also."

8. The politicisation of labour issues is justified as a natural recourse to unfair political pressure, prejudice or societal discrimination (Institute for Industrial Relations, 1988:40).
9. This is based on the growing acceptance of the right of employees to associate and subsequently enjoy "all the instruments of political democracy" (Weiler, 1980:215).
10. Thereby increasing employment levels and potential membership.
11. Factors influencing the nature and scope of trade union politicisation in the public sector, include:
 - * The relative size (nominal strength) of a trade union;
 - * The degree to which management is reliant on its electorate to make "politically correct decisions" (i.e. public accountability);
 - * The nature of prevailing political, socio-economic and legal environments; and
 - * Prevailing union mores.

(International Labour Organisation, 1989a:107-122; Lewin *et al*, 1988:23)

12. The issue of amalgamating public and private sector labour relations systems is contentious. Some broad reasons both for and against this approach are briefly illustrated.

Those opposing the merger contend that the monopolistic nature of the public sector underscores the potential for disruption as a result of extended labour rights. This would place "extraordinary pressure" on the State to acquiesce to workforce demands at the cost of the public.

However, those favouring this possibility contend that the States' role ought to be distinct from that of its role as sovereign power. Furthermore, it is proposed that since public services are paid for partly by public employees (taxation), they ought to enjoy the right to determine the value of their own employ.

(Heneman & Schwab, 1978:275; International Labour Organisation, 1989a:124-125).

13. With particular reference to the United States of America (Freeman, 1986:43).
14. This term broadly refers to *developed countries*.

15. This term broadly refers to *developing countries*.
16. For example, in spite of the prohibition of the right to strike for public sector employees in the United Kingdom, the largest civil service strike in 1981 approximately 300 000 employees (Winchester in Treu *et al*, 1987).
17. This notion was supported by the *Green Paper on Trade Union Immunities* (1981) which investigated, *inter alia*, the usefulness of a *no strike* agreement between employers and trade unions (Morris, 1985:227).
18. In this instance, it is suggested that *neutrality* removes the potential problem of "pride and popularity" which can hamper a settlement (Weiler, 1980:242).
19. Examples of countries where compulsory arbitration is applied with an *anti-strike* clause include: Ireland, Norway and the United Kingdom (International Labour Organisation, 1989a:123-124).
20. In this context, Weiler (1980:229) comments:

"All in all, one can maintain that interest arbitration is tolerable, although perhaps an undesirable ingredient of the labour relations system in an essential public service."
21. This view is echoed by Lewin *et al* (1988:414) who suggests that there is "no systematic support for the belief that arbitration should or will serve as a check on public union monopoly power".
22. A splitting of awards may often be practised where arbiters want to avoid swinging decisions in matters that they may have little insight into, as Weiler (1980:227) concedes:

"The arbitration fraternity is frank to recognise that it does not have the wisdom of Solomon. Normally it is content to split the baby down the middle!"
23. This trend is notable in the case of *Final-offer* arbitration, with both demands being most likely exaggerated (Lieberman, 1980:94).
24. For a specific list of suggested benefits of arbitration, see Lewin *et al* (1988:413-6).
25. Lewin *et al* (1988:422) observe:

"... there is no doubt that arbitration has also increased union and

management dependency on third parties to resolve their disputes and, in doing so, has frequently sapped the vitality of the bargaining process."

Although agreeing with this assertion, Freeman (1986:73) still cautions that the cause and effect of arbitration on the bargaining process must be proved.

26. See Heneman & Schwab (1978:270-271) and Lieberman (1980:96) for the differences between public and private sector bargaining scope.
27. Weiler (1980:214) mentions, for example, that municipal employees in the Canadian public sector enjoy distinct bargaining rights.
28. See Corby (1991:42) - growth of agency Whitley's as decentralised bargaining forums in the United Kingdom; Hyman (1975:165) - the expression of dissatisfaction with national settlements in the United Kingdom.
29. Winchester furthermore observes that in the United Kingdom, local authorities have generally managed "to maintain a degree of autonomy in bargaining in spite of the increasing financial pressure" (Treu et al.1987:219).
30. Otherwise known as the National Personnel Authority.
31. The benefit of incorporating both approaches was also advocated by the findings of the Donovan Commission which attributed the absence of strife in British local government during the 1960's to the practice of "joint negotiation at the national level and joint consultation at the local level" (Knowles, 1988:227).
32. States where these mechanisms are frequently applied, include Australia, Canada, Denmark, Finland, Netherlands, New Zealand, Norway, Spain, United Kingdom and the United States of America (International Labour Organisation, 1989a:123).
33. Lewin *et al* (1988:335) suggest that the effectiveness of mediation can be established by means of calculating the number of impasses settled during its application.
34. Useful attributes of a mediator include: Intelligence, acumen, practicality, tactfulness, diplomacy, and knowledgeable (of all matters pertaining to the conflict) (Bendix, 1989:208).

35. Bendix (1989:208) suggests that "the introduction of a neutral person could, especially if he is an experienced negotiator, serve to diffuse tensions and induce progress towards settlement" even when parties seem unable or unwilling to settle.
36. A significant advantage of continuing negotiations is that by increasing the likelihood for agreement, costly alternatives in the form of industrial action can be averted (Independent Mediation Society of South Africa, 1985:1; Subbarao, 1988:122).
37. Entrenched by means of the Slichter Law of 1947, the State settles disputes in essential services by: Mediation, an inquiry, continuing partial operation of the service affected, and seizure of work (Pankert, 1980:733).
38. It is broadly accepted that essential services require special dispute settlement procedures. Although regulations vary, most dispute settlement arrangements have a legal basis "since they relate directly to the protection of the general interest which is primarily a prerogative of the public authorities" (Pankert, 1980:725,727).
39. This trend can be illustrated in the case of the United Kingdom, where a dual approach exists comprising a form of *Joint Regulation* at the national level between employer organisations and trade union federations, and collective bargaining at the local level.
40. In this regard Treu *et al* (1987:230) observe that "at all times voluntary disputes procedures agreed between unions and employers have been regarded as the primary method of regulating conflict" in the public sector.
41. The Arbitration, Conciliation and Arbitration Service (ACAS). Established under the Employment Protection Act (1975) it consists of one chairman and nine members representing, the trade unions, industry and academia. (Treu *et al*, 1987:232)
42. For instance, in the United Kingdom, large-scale State intervention in local government disputes is suggested to have exacerbated labour conflict (Rhodes, 1985:297).

CHAPTER SIX

ENDNOTES

1. Regan (1982:59) describes intergovernmental relations as the "legal, financial and functional overlap" of interactions taking place between the various tiers of government.

2. It is proposed by Page & Goldsmith (1985:175) that no specific measures can be applied in determining the precise nature of intergovernmental relations. Subsequently, they note:

"Studies concerned with central-local relations, under whatever banner they march, have made relatively few steps forward in developing a comparative analysis".

3. Decentralisation can be defined as:

"Those [powers] which have been devolved in order to allow a local authority to act in its own discretion within certain prescribed limits - *and to do so through officials appointed by itself* (own *italics*)." (Heymans & Tötemeyer, 1988:4)

4. Other forms of central-local relations include:

Deconcentration: Which is characterised by the role of local authority's as "administrative agencies" which serve their communities on behalf of central government (Heymans & Tötemeyer, 1988:4). Deconcentration can also be described as the "geographical dispersal of functions, structures or staff by the central government" (Cameron in Heymans & Tötemeyer, 1988:49);

Devolution: Which is characterised by a greater scope of local government discretionary powers. Devolution can also be described as "the legal conferring of powers [on local authority's] to discharge specified or residual functions" (Smith, 1979:215); and

Delegation: Which is characterised by the conferral of powers by central government on local government within certain constraints and on an agency basis (Rondinelli *et al.*, 1984).

5. Corporatism can be defined as:

"A system of interest representation in which the constituent units are organised into a limited number of singular, compulsory, non-competitive, hierarchically ordered and functionally differentiated categories, recognised or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on the selection of leaders and articulation of demands and supports." (Schmitter in Rhodes, 1985:288)

6. These characteristics apply to local government in general and not where such organisations are racially established. See Craythorne (1982:21).

7. Local authority's can be distinguished by urban, city or town councils (Craythorne, 1982:21).

8. It can be noted that the Local Government Transition Act (Act 209 of 1993) has nominated municipal councils until the municipal election due at the end of 1994.

9. Politics is defined as:

"a *struggle* (own emphasis) among competing forces for the right to control the character of public policy." (Morrow,1980:3)

10. This trend has remained relatively stable over past years as indicated by Sing & Maharaj (1990:43) who estimated that the public sector composed of approximately 15.5% of the economically active population of South Africa in 1990. A similar figure was suggested by The Star (13/04/92) at the end of 1991 (approximately 1.68 million public sector employees).

11. As noted previously, the *win-lose* approach is distinguished by the notion that "a gain for workers essentially means a loss for employers and *vice versa*" (Maller, 1989:1).

12. Cloete (1978:218) noted that a lack of provincial expertise was lacking at the time:

"Indeed, the provincial authorities are today totally unprepared to assist the municipal authorities to obtain *professional personnel administration*".

13. In the context of applying appropriate or standardised labour relations policies.

14. Cloete (1978:218) for instance describes local government personnel administration practices in those times as a "sadly neglected field of work ... carried on haphazardly and mostly as a clerical function in an amateurish manner".
15. However, according to Cloete (1978:215), this trend can be traced back as far as the 1970's where he noted that all 578 local authorities in Namibia and South Africa at the time were devising and utilising their "own labour policies and practices".
16. The relative representation of each organisations is calculated according to average organisational size (i.e. number of employees). In 1990 the federation comprised:
 - * Municipal Employers' Organisation: three members;
 - * Cape Province Local Authorities Employers' Association: two members;
 - * Orange Free State Gold Fields Employers' Organisation: one member; and
 - * Major Cities Employer's Organisation: one member.(Sing & Maharaj, 1990:49)
17. For instance the Roman Catholic Church criticised existing legal provisions for their lack of equity in due process: "The purpose of the law should be to ensure that bargaining between workers and management was free and fair so that a balance of interests was reached and maintained" ("Church calls for labour policy change" 'in Rand Daily Mail, 9/11/1980).
18. Similarly, within section 65 of the Labour Relations Act (Act 28 of 1956) [as amended], as with the prohibition of the right to strike for local government employees, the right of employers to a lock-out is proscribed (Bendix, 1992:545; Sing & Maharaj, 1990:44).
19. It is stressed by Pillay & Bendix (1993:49) that essential services in the South African context are listed by the Labour Relations Act (Act 28 of 1956) [as amended] according to the criteria of *employer* and *employee*, and are not defined.
20. Brassey *et al* (1987:125) argues that the prohibition of the right to strike for all *essential services* undermines the notion that the right to strike is a fundamental right:

"Macfarlane points out [that] a strong case can be made for partially or wholly depriving certain employees of the right [to strike] whose services are vital to the welfare of all. The case has been strong enough to be accepted by the legislature here. Striking is prohibited ... for employees of municipalities ... This tends to suggest that the answer to the question we

as lawyers should be asking ourselves - namely, whether legislature regards the right to strike as fundamental - is "no".

21. The sanction, in some cases, of industrial action in local government by the industrial court has been broadly founded on a measure or degree of the undesirability of strikes in terms of potential violence or harm to the public interest. Where an overt "threat" to public interest has not been found to exist then in some instances industrial action was sanctioned.
(Christie,1992:25) For example, a nation-wide work stoppage which occurred during 1992 involving an estimated seventy-five percent of the total workforce for a period of eleven days was sanctioned on the grounds that "it did not pose an imminent danger to the public" (Pillay & Bendix, 1993:54).

22. Cameron, Cheadle & Thompson (1989:75) stress the notion that the difficulty of determining a strict definition of *strikes* is particularly relevant to essential services where they are prohibited outright:

"The classification of such conduct may be of critical importance to essential services. In this sector, if a work-to-rule qualifies as a strike it is not merely enjoined pending the outcome of the statutory conciliation process - it is prohibited outright."

CHAPTER SEVEN

ENDNOTES

1. Reference to the racial nature of industrial action in local government is based on historical distinctions and in no way reflects the opinion of the writer. However, it is submitted that this characteristic has played a key role in local authority labour disputes, as elsewhere, and subsequently, the more militant disposition of "non-white" trade unions to the highly repressive measures applied in terms of their fundamental rights. These characteristics are described further within the context of the following causes of labour disputes.
2. *Independent* trade union are also referred to as *workerist* or *populist* trade unions (Institute for Industrial Relations, 1988:48).
3. The growth of political demands for change by trade unions was clearly felt throughout South Africa. This trend can be illustrated by a survey of the Graduate School of Business at the University of Cape Town in 1989 involving 35 private sector organisations in the Western Cape who all indicated a high level of concern with the politicisation of labour relations in their organisations (Horwitz, 1991b:11).
4. This dilemma was clearly echoed by the question:

"What is a black unions' priority? Is it to struggle to improve the wages and working conditions of its membership? Or is it to struggle to create a democratic South Africa?" (Institute for Industrial Relations, 1988:43)
5. In some instances, employers were vocally suspicious of emerging trade union politicisation, criticising their role as "communist" (Reese, 1983:48).
6. "Political uncertainty" may be defined as:

"The process leading to the emergence or development of a post-apartheid society" (Du Plessis, 1990:63).
7. Wood (1987:183) attributes part of the politicisation of trade union demands to State exigencies in this regard:

"Whilst the direct causes of most strikes remained strictly economic, subsequent state action (most commonly by the riot and security police) cast an unmistakable political pallor over subsequent collective action."

8. Despite their political role, some trade unions highlighted a clear commitment to their members:

"Trade unions are not political parties. Trade unions are organisations of workers ... We cannot pretend that all our members are politically-conscious people ... Our strength lies in our ability to unite in the workplace with the possibility of stopping production." (Municipal and General Workers union in MacShane *et al*, 1984:170).

9. One school of thought suggested that "political issues" involved "everything" (Institute for Industrial Relations, 1988:40).
10. For example, the removal of municipal By-Law 1994 which endorsed "racial provisions in the employment field" at the Cape Town City Council (Cameron, 1986:73).
11. Otherwise coined the *Living Wage Campaign*. This campaign was initiated by the *independent* trade union movement in May 1987. The objective was to set a legislated minimum wage level for workers at the bottom of the wage scale. An example was the proposed minimum wage level demanded in 1991 of around R1500 per month as determined by COSATU. The campaign was initiated by means of joint action with trade unions sympathetic to the cause, *inter alia*, local government trade unions. (Andrew Levy & Associates, 1991:25; Roux, 1990:21)
12. Suggestions by trade unions have included the introduction of market-related salaries for public sector employees. However, employers have refused this proposal on the basis of the uncompetitive and tax-based nature of public sector institutions and therefore the argument that such a policy would ultimately place a further financial burden on its citizens. (Cameron in Institute for Industrial Relations, 1988a:37)
13. As Levy (1991) suggested:

"It depends on the skill of the worker a streetsweeper [for example] would not be able to call the tune, he would have to rely more on his union because his job may be easily replaced."

This can be illustrated by the Black Municipal Workers Union strike at the Johannesburg City Council in 1980. The strike was triggered in reaction to the formation of an "in-house" trade union by employers which was claimed to be "representative" of all council workers and would effectively represent all their interests. Subsequently, the "non-white" employees formed the Black Municipal Workers Union which the council refused to recognise. This led to a strike by thousands of members of the Black Municipal Workers Union at Orlando Power Station demanding recognition. However, the council threatened an ultimatum for strikers to return to work, and failing this, initiated large

scale dismissals. However, after further sympathy strikes by other trade unions in other local authorities and public sector organisations, many of the dismissed workers were reinstated. (Wood, 1987:153-154).

Notably though, the fear of retrenchment did not go unnoticed by Die Vaderland which commented at the time:

"... no one seems to have spelt out the economic implications to him [the "black man"]. His large numbers makes his labour cheap and readily replaceable." (29/07/1980)

and again,

"They ["black workforce"] are not as indispensable as they have been led to believe by those who organised the strike. They are easily replaceable and it is thus easy to dismiss them." (30/07/1980)

14. This legislation can be ascribed to an all-out effort by the State since the 1940's to curtail trade union powers (Du Toit, 1976:21). Notably, as early as the 1940's ministerial prerogative (under the auspices of Dr Malan) demanded a curtailment of fundamental labour rights such as the right to strike and bargain as well as the elimination of "self-government in industry [which] only gave rise to industrial unrest" (Du Toit, 1976:21).
15. The Bantu Labour Relations Regulations Amendment Act (Act 70 of 1973) defined "bantú" as "any member of an aboriginal race or tribe of Africa" (Du Toit, 1976:47).
16. This view is echoed by the Employment Law journal which states that judicial inconsistency has been a cause of labour conflict as:

"A principle of equity is no sooner established than the court begins to qualify it" (1991:86).
17. Explanations regarding the dualistic legislative system vary. Golding (1985:50), for example, suggests that the distinction between the labour rights of both sectors can be attributed to the fact that "unlike the private sector, where an individual and competing firm is usually confronted, workers in the public sector are up against the entire state network".
18. As Bennett (1988:70) echoes:

"Years of painstaking organisation by African unions ... resulted in the inevitable recognition of basic trade union rights in the private sector. Unless significant changes are made in South Africa to acknowledge labour rights for all workers ... *significant labour conflict could develop in*

the State's back-yard."

19. Ernstzen (1991:3) for instance noted that in 1990 alone the majority of strikes (over 50) declared by the South African Municipal Workers Union (SAMWU) concerned union recognition alone. These were broadly successful in that "employers entered into negotiations ... and recognition agreements were won, or are being negotiated".
20. The lack of recognition by the State given to the majority of *independent* public sector trade unions has been conspicuous in local authority's. The usefulness of registration was the safeguards it provided to trade unions in the form of protecting of striking members from dismissal (See Die Vaderland, 31/07/1980 for example). However, the prejudicial conditions laid out by the State made *registration* tantamount to "collaboration with the state" often resulting in "long, bitter and violent" campaigns by *unregistered* trade unions for employer recognition (Community Resource and Information Centre, 1989:12; Ernstzen, 1991:32).

In 1983 however, led to the formal adoption of recognition agreements (at the employers discretion) as "a new system of governance in place of unilateral action" (Douwes Dekker, 1986:99; Ernstzen, 1991:31).

Recognition agreements were characterised by "a sequence of negotiation, followed by mediation, followed by arbitration" (Independent Mediation Society of South Africa, 1985:4).

A further source of contention for *unregistered* trade unions in local authority's and other public sector organisations was the policy of forced membership by the automatic registration of certain employee categories with a specific *registered* trade union (The Argus, 26/11/1988; Rand Daily Mail, 9/11/1980).

21. As Craythorne (1982:374) suggests:

"When the general body of officialdom sees its leaders appear as playthings, squeezed between forces which affect their power and status, linked with increasing central government interference there must be a serious affect on moral."

22. As Magwaza (in Botha, 1990:30) contends:

"We have a very powerful trade union movement, which is very militant and politically charged because of the environment that we are living in. This creates an inherently explosive and violent situation where a powerful union force is running up against a very intransigent opposition."

23. As Craythorne (1990:215) explains:

"... because justice and equity demand a machinery which of necessity takes time to get going, there are local authorities that "play the system" by delaying a resolution of the issue for as long as possible."

"One tactic is to state that there is no dispute; or that the employees' demands or requests are still being considered, while in fact there is no real intention of agreeing."

24. The principle of *mutual benefit* suggests that the State assumes a policy setting role, while in return for employer indulgences, ensure the protection of employer interests (Albertyn, 1989:83). In this context, the Institute for Industrial Relations (1988:43) contends that the kinship irrevocably drew both the State and employers closer together as a result of the repressive laws applied by the former in benefiting the latter:

"If employers make use of the law to repress legitimate protests by black South Africans then, in the eyes of those people and their supporters in the world outside, they declare themselves to be part and parcel of the apartheid legal system."

25. For claims to the contrary see Du Toit (1976:154) who countered that mutual suspicions between employers and trade unions were becoming more diluted in the 1970's.

26. Poppleton (1985:18) suggests that the sudden emergence of militant trade unionism in local authorities left employers unprepared:

"A particular problem in local government in South Africa [is that] the pressure of a fairly amicable white union over the past years hardly provided the line manager with a learning situation in preparation for the sudden appearance of active and often aggressive black unions."

27. According to the Labour Research Service (1990:i), this trend can be further attributed to trade union expectations of a "post apartheid dividend" based on their relative size.

28. It is suggested that a key outcome of external trade union interest in local authority's has been the increased use of confrontational tactics, often at the cost of negotiations, in order to attract prospective membership (King, 1990:28). In local authorities this trend has been reflected at two levels of the labour relationship, in particular:

- * Firstly, between the *independent* trade unions, as illustrated by the rivalry between the South African Municipal Workers Union and the National Union of

Public Sector Workers; and

- * Secondly, between professional associations and traditionally "white" trade unions and the *independent* trade union movement (although largely ameliorated by the recent annulment of "forced membership" policies in local government) (Ernstzen, 1991:32; King, 1990:28; South African Institute of Race Relations, 1988:662).

It can be noted that in the latter case, Mullins (1988:5) suggests that "white" trade union militancy can also become an emergent feature of labour disputes in local authority's due to the decline in State protectionism and the possible affects of affirmative action on employment.

29. The latter sense of frustration is echoed by Bendix (1992:553) who notes:

"Strikes hinging on wages or unknown causes are often indicative of generalised dissatisfaction."

30. The use of police and the military has been a feature of labour relations in South Africa (Wood, 1987:259). This assertion is exemplified by the International Labour Office (1986:23):

"Increasingly, since Blacks were permitted to enter trade unions there has been considerable use of security and other legislation by the authorities in the face of industrial action by workers and the increasing unity of newly emerging unions with mainly Black leadership."

31. To sum up, Roux (1989:11) describes the role of the State as undermining the power base of *independent* trade unions in the public sector:

"Brutal disciplinary codes and a proliferation of "sweetheart" staff associations which reinforce the skills hierarchy, have all combined to weaken organisations and dilute the demands of the majority unskilled and semi-skilled workers."

32. The emplacement of officials sympathetic to the States cause can be historically illustrated in the case of the Cape Town City Council:

In 1965 the Diemont and Slater Commissions concluded that irregular staffing practices were taking place at the council due to the "unfettered power of the staff" (Cameron, 1986:66).

In 1975 the De Klerk Commission proposed the establishment of a Municipal Services Council (established eventually in 1981) with a

senior council member as chairman, making the local authority one "whose employer\employee relationships are (sic) largely administered by an administrator-appointed body" (Cameron, 1986:68). This allowed "the provincial authorities to politicise the Cape Town municipal service, to give secret orders on the recruitment of the staff to Commissioners and to destroy the governing power of the City Council" (Craythorne in Cameron, 1986:70).

33. See for instance the Labour Relations Training Programme written by the Labour Relations Unit of the Cape Town City Council which indicates one of the main causes of local authority labour grievances as a "retardation in communication structures" (1990/1:n.p.).
34. According to Magawaza (in Botha, 1990:29) management misperception may be deliberate in that demands put forward may be perceived as unrealistic by employers but on the other hand justified by the trade unions concerned. This situation gives rise to labour conflict:

"If one starts off saying that demands are unrealistic and unjustified, that in itself is going to give rise to conflict." (Magawaza in Botha, 1990:29)
35. Ineffective interactive communication structures, are according to Coetzee (1985:140), a major source of conflict in larger municipalities where the enormity of the workforce can obstruct useful liaisons between employers and employees.
36. As Thompson explains:

"[This is] a feature which has been entrenched in recent years with the creation of an Appellate Division. This rule-building process, ancillary to the collective bargaining process, plays a vital part in institutionalising industrial conflict in contemporary industrial societies. It is labour laws' expression of the rule of law." (Thompson, 1992:504)
37. Other forms of striking include, secondary or sympathy strikes and partial or intermittent strikes (Cameron, Cheadle & Thompson, 1989:75-76).
38. "Strikes" in this context broadly refer to all forms of industrial action.
39. These figures were calculated on the basis of a mean total of 9936 strikes over the period 1972-1992 as provided by Bendix (1992:549-556) and the Central Statistical Services (1993).

The calculation involved:

Total number of strikes / years = average strikes per year.

40. It can be noted that at this time, the lack of "unfair labour practice" applications provided employers with far-reaching rights in terms of retrenchment without notice or due process.
41. The cost of industrial action can be estimated according to the number of "man-days" or "value-days" lost. "Man-days" or "man-hours" (multiplied by 24) are calculated, as the term suggests, by the amount of working days or hours lost as a result of industrial action. "Value-days" or "value-hours" are calculated by the "unit cost" of each employee. The formula, notably for local government, usually involves: the total of their annual salary, pension, medical group insurance, thirteenth cheque and long service allowance divided by 2000 (Municipal Employers Organisation, 1988-1992).
42. According to Bendix (1992:553) wages have generally been the most popular cause of industrial action in South Africa.
43. Public sector wage expenditures account for a vast portion of the State budget, for example the estimated wage expenditure for 1992 came to R48 billion. (Business Day, 5/02/1992)
44. Average wage increases amounted to 12%, 1.5% lower than the inflation rate of 13.5% at the time (Andrew Levy & Associates, 1992/1993; Von Holdt, 1993:38).
45. This feature was ascribed to the relatively low base from which salary and wage adjustments were made during this part of the year.
46. "Strikes" in this instance refers to all forms of industrial action unless otherwise specified.
47. The rapid escalation of strikes as a result of *wages and other* issues can be attributed to a broad shift in trade union focus from macro-political and economic issues to specific organisational concerns (Andrew Levy & Associates, 1992/1993; Von Holdt, 1993:38).
48. Please note that in this context strikes refers to all forms of industrial action.
49. The "Living Wage Campaign" resulted in a demand for a set minimum wage level for all workers in South Africa. Key criteria proposed for calculating these minimum levels included, the age, marital status and number of dependents of each individual. However, the "Living Wage Campaign" was broadly halted in the late 1980's and replaced by other political and economic forms of mass action.
50. In local government, services which have contributed to job insecurity as a result of proposed privatisation included refuse removal, the maintenance of parks and recreational facilities and security services

(Bennett, 1988:69; Ernstzen, 1991:33).

51. Notably, the growing demand to redress racial inequities in local government employment hierarchies as a result of historical imbalances.
52. Local authorities have been generally viewed as vestiges of apartheid which enforced racial interests through "control and punishment" (The Argus, 17/10/1992; Töttemeyer in Heymans & Töttemeyer, 1988:8). Consequently, a key feature of the "independent" trade union movement has involved the demand to transform existing structures into more representative and democratically-elected bodies (Ernstzen, 1991:33).
53. A feature of political campaigns was the close association between the South African Municipal Workers Union and the African National Congress, and with relevance to local authorities, the demand for the resignation of certain councillors (see Ernstzen, 1991:37).
54. Craythorne (1990:215) suggests that the costs of industrial action can be much broader, such as an overall loss of worker efficiency and poor productivity as a result of low worker morale.
55. Industrial Councils are established in terms of the Labour Relations Act (Act 28 of 1956) [since amended].
56. The use of voluntary arbitration in an Industrial Court refers to the prior consent of both parties in dispute to settle matters directly by means of this mechanism rather than applying other optional measures.

BIBLIOGRAPHY

BOOKS:

Aaron, B., Najita, J.M., & Stern, J.L., Public-Sector Bargaining. Washington, D.C.: Bureau of National Affairs, 1988.

Alfred, M., Bargain, Don't fight!: A Manual of Industrial Relations Negotiating in South Africa. Johannesburg: Thomson Publications, 1984.

Baker, F., Organisational Systems: General Systems Approach to Complex Organisations. Illinois: Richard D. Erwin, 1973.

Ben-Israel, R., International Labour Standards: The Case of Freedom to Strike. London: Kluwer Law and Taxation Publishers, 1988.

Bendix, S., Industrial Relations in South Africa. Cape Town: Juta, 1989.

Bendix, S., Industrial Relations in South Africa. Cape Town: Juta, 1992.

Benjamin, P., Jacobus, R. & Albertyn, C., Strikes, Lock-Outs & Arbitration in South African Labour Law - Proceedings of the Labour Law Conference 1988. Witwatersrand: Juta, 1988.

Brassey, M., et al. The New Labour Law: Strikes, dismissals, and the unfair labour practice in South African law. Cape Town: Rustica Press, 1987.

Caiden, G.E., Public Administration. California: Pacific Publishers, 1982.

Cameron, E., Cheadle, H. & Thompson, C. The New Labour Relations Act. Cape Town: Juta, 1989.

Cloete, J.N.N., Provincial and Municipal Government and Administration: Selected Readings. Van Scaik: Pretoria, 1978.

Cloete, J.J.N., Towns and Cities: Their Government and Administration. Pretoria: Van Schaik, 1986.

Cloete, J.J.N., Central, Regional and Local Institutions of South Africa. Pretoria: Van Schaik, 1988.

Craythorne, D.L., Municipal Administration: A Handbook.
Cape Town: Juta, 1990.

Cutchin, D.A., Guide to Public Administration. Itasca, Ill.: Peacock Publishers, 1981.

Denhart, R.B., Theories of Public Organisation. California: Brooks, 1984.

Dlugos, G., Dorow, W., & Weiermair, K., Management under Differing Labour Market and Employment Systems. New York: Walter de Gruyter & Co., 1988.

Douwes Dekker, L., Industrial Relations for a changing South Africa. Johannesburg: Lex Patria, 1990.

Du Toit., M.A., South African Trade Unions: History, Legislation, Policy. Johannesburg: McGraw-Hill, 1976.

Dunsire, A., Administration: The Word and the Science. London: Martin Robertson, 1975.

Dye, T.R., Understanding Public Policy. New Jersey: Prentice-Hall, 1987.

Fesler, J.W., Public Administration: Theory and Practice. Englewood Cliffs: Prentice-Hall, 1980.

Fick, R. & Hugh High,S., The Theory and Practice of Industrial Relations in South Africa. Southern Africa: Hodder & Stoughton, 1987.

Fox, W., Schwella, E. & Wissink, H. Public Management. Cape Town: Juta, 1991.

Garret, J., The Management of Government Great Britain: Penguin, 1972.

Gerber, P.D., Nel, P.S. & Van Dyk, P.S., Human Resources Management. Pretoria: Southern Publishers, 1992.

Gildenhuys, J.S.H., South African Public Administration: Past, Present and Future. Pinetown: Owen Burgess, 1988.

Golembiewski, R.T. & Gibson, F., Readings in Public Administration: Institutions, Processes, Behaviour, Policy. Boston: Houghton Mifflin, 1983.

Hammond-Tooke,W.D., An Introduction to Local Government. Johannesburg: Witwatersrand University Press, 1977.

- Hanekom, S.X., Rowland, R.W. and Bain, E.G., Key Aspects of Public Administration.** Johannesburg: MacMillan, 1985.
- Harris, P., Foundations of Public Administration: A Comparative Approach.** Hong Kong: Hong Kong University Press, 1990.
- Hays, S.W. & Kearney, R.C., Public Personnel Administration: Problems and Prospects.** New Jersey: Prentice-Hall, 1983.
- Heneman, H.G. & Schwab, D.P., Perspectives on Personnel/ Human Resource Management.** United States of America: Richard D. Irwin, 1978.
- Heymans, C. & Totemeyer, G., Government by the People?** Cape Town:Juta, 1988.
- Hyman, R., Industrial Relations - A Marxist Introduction.** London: McMillan, 1975.
- Jun, J.S., Public Administration: Design and Problem Solving.** New York, MacMillan, 1986.
- Kahn-Freund, O. et al., Labour and the Law.** London: Stevens & Sons, 1977.
- Kerlinger, F.N., Foundations of Behavioural Research.** New York: Holt, Rinehart and Winston, 1973.
- Klinger, D. Public Personnel Management: Contexts and Strategies.** United States of America: Prentice-Hall, 1980.
- Knowles, R., Effective Management in Local Government: An introduction to current practice.** Cambridge: ICSA Publishing, 1988.
- Koontz, H. & O'Donnell, C., Principles of Management: An Analysis of Managerial Functions.** Tokyo: McGraw-Hill, 1968.
- Lewin, D. et al., Public Sector Labour Relations : Analysis and Readings.** Toronto: Lexington Books, 1988.
- Lieberman, M., Public-Sector Bargaining.** Toronto: Lexington Books, 1980.
- MacShane, D. et al., Power!: Black workers, their unions and the struggle for freedom in South Africa.** England: Spokesman, 1984.
- Mawhood, P., Local Government in the Third World.** New York: John Wiley & Sons, 1983.

- Morris, G.S.,** Strikes in Essential Services. London: Mansell Publishing Limited, 1986.
- Morrow, W.L.,** Public Administration: Politics, Policy and the Political System. New York: Random House, 1980.
- Nigro, F.A. & Nigro, L.G.,** Modern Public Administration. New York: Harper & Row, 1980.
- Reese, K.,** Industrial Relations in South African Perspective. Johannesburg: McGraw-Hill, 1983.
- Rycroft, A. & Jordaan, B.,** A Guide to South African Labour Law. Cape Town: Juta, 1990.
- Savchenko, P.,** What is Labour? : ABC of Social and Political Knowledge. Moscow: Progress Publishers, 1987.
- Shafritz, J.,** A New World: Readings on modern Public Personnel Management. Chicago: International Management Association, 1975.
- Siegel, G. & Myrtle, R.,** Public Personnel Administration: Concepts and Practices. Boston: Houghton Mifflin, 1985.
- Sikula, A.F.,** Personnel Administration and Human Resources Management. Toronto: John Wiley & Sons, 1976.
- Shafritz, J.,** A New World: Readings on modern Public Personnel Management. Chicago: International Management Association, 1975.
- Stahl, O.G.,** Public Personnel Administration. New York: Harper & Row, 1962.
- Vocino, T. & Rabin, J.,** Contemporary Public Administration. New York: Harcourt Brace Jovanovich, 1981.
- Weiler, P.,** Reconcilable Differences: New Directions in Canadian Labour Law. Toronto: The Carswell Company, 1980.
- Whicker, M.L. & Areson, T.W.,** Public Sector Management. New York: Praeger, 1990.
- White, L.D.,** Introduction to the Study of Public Administration. New York: MacMillan, 1955.
- Windmuller, J.P. & Gladstone, A.,** Employers Associations and Industrial Relations: A Comparative Study. Oxford: Clarendon Press, 1984.

JOURNALS:

Albertyn, C., "Trading Partners: Towards an Employer/Labour Lobby" in Indicator SA, Vol. 6, No. 3, Winter 1989.

Bendix, W & Graham, A., "The Right to Strike in South Africa" in Industrial Relations Journal, 2nd Quarter, 1988.

Bendix, S. & Swart, S.M., "The Collective Bargaining Structure in South Africa: An Appraisal of the Present System" in Industrial Relations Journal of South Africa, Vol. 2, No. 3, 1982.

Benjamin, P., "The big ban theory: Strikes in essential services" in Employment Law, Vol. 6, No. 2, November 1989.

Bennett, M., "Organising the Presidents Men" in Indicator SA, Vol. 5, No. 2, Summer 1988.

Boshoff, T. & Bendix, W., "Fact-finding in Essential Services in the South African Public Service" in Industrial and Social Relations, Vol. 13, No's. 1 & 2, 1993.

Botha, A., "Focus on IR" in Institute of Personnel Management Journal, April 1990.

Centre for Applied Legal Studies, "Essential Service Workers" in South African Labour Bulletin, Vol. 14, No.6, February 1990.

Community Resource and Information Centre, "Public Sector Strikes: an Overview" in South African Labour Bulletin, Vol. 14, No.8, 1989.

Conyers, D., "Decentralisation and Development: A Review of the Literature" in Public Administration and Development, Vol. 4, 1984.

Copelyn, J., "Collective Bargaining: a base for transforming industry" in South African Labour Bulletin, Vol. 15, No. 6, March 1991.

Corby, S., "Civil Service Decentralisation: Reality or Rhetoric?" in Personnel Management, London: February 1991.

Corson, J.J., "Distinguishing Characteristics of Public Administration" in Public Administration Review, Vol. 12, No.2, 1952.

Douwes Dekker, L., "The Right to Strike" in Key Issues in Collective Bargaining. Witwatersrand: Institute for Industrial Relations, Series 4, Vol. 1, n.d.

Du Plessis, A., "Managing in Political Uncertainty: Operating Management Guidelines" in Industrial Relations Journal of South Africa, Vol. 10, No. 3, 1990.

"Hearings for Strikers" in Employment Law, Vol. 7, No. 4, March 1991.

Ernstzen, J., "SAMWU three years on the march" in South African Labour Bulletin, Vol. 15, No. 8, June 1991.

Farber, H.S. & Bazerman, M.H., "Divergent Expectations as a cause of Disagreement in Bargaining: Evidence from a Comparison of Arbitration Schemes" in Quarterly Journal of Economics, Vol. 104, February 1989.

Flanagan, R.J., "The Economics of Unions and Collective Bargaining" in Industrial Relations: A Journal of Economy and Society. Berkley: Institute of Industrial Relations, University of California, Vol. 29, No. 2, 1990.

Freeman, R.B., "Unionism Comes to the Public Sector" in Journal of Economic Literature. Vol. 24, March 1986.

Golding, M., "Workers in the State Sector: The Case of the Civil Administration" in South African Labour Bulletin, Vol. 10, No. 5, April 1985.

Golding, M., "A Changing World in the 1990's" in Institute of Personnel Management Journal, Vol. 9, No.2, September 1990.

Hilliard, V.G., "Do Public Servants have the Right to Strike?" in Boardroom, Journal of the Southern African Institute of Chartered Secretaries and Administrators, January 1994.

Horwitz, F., "Collective Bargaining climate and IR policy options" in Institute of Personnel Management Journal, May 1989.

Horwitz, F., "Conflict Management and Negotiation in South Africa: Lessons from Industrial Relations" in Industrial Relations Journal of South Africa, Vol. 11, No. 1, 1991a.

Jowell, K., "The Bargaining Triangle: Beyond the Wiehahn Decade" in Indicator SA, Vol. 6, No. 3, Winter 1989.

King, S., "The Psychological Dynamics of Union Loyalty During Industrial Action" in Industrial Relations Journal of South Africa, Vol. 10, No. 3 1990.

Labour Research Service, "Wage settlements in the first half of 1990" in Wage Review, No. 5, 7 August 1990.

Landman, A.A., "A Bill of Rights: Its Implications for labour relations" in Institute of Personnel Management Journal, February 1990.

Landman, A.A., "The Implications of the Labour Relations Amendment Act of 1991" in Industrial Relations Journal of South Africa, Vol. 11, No. 1, 1991.

Levitz, E., "What is the Public Service?" in PUBLICO, February 1990.

McCarthy, W.E.J., "The Case for Labour Courts" in Industrial Relations Journal, Vol. 21, No. 2, Summer 1990, Great Britain.

Mole, A.J. & Swanepoel, B.J., "Managing for better Industrial Relations: A Case Study Re-emphasises Some Neglected Aspects" in South African Labour Relations Journal, Vol. 17, No. 4, December 1993.

Mullins, A., "The Public Sector Wage Freeze" in the Editorial Feature, Institute for Industrial Relations, No. 109, March 1988.

Negota, G., "Democracy the basis of the ANC's HR policy" in Human Resource Managment, April 1991.

Nyembe, L., "Focus on the Public Sector" in South African Labour Bulletin, Vol. 16, No.7, September/October 1992.

Olivier, M., "The Dismissal of Striking Workers: Illegal Strikes" in De Rebus, No. 307, July 1993.

Pankert, A., "Settlement of labour disputes in essential services" in International Labour Review, Vol. 1119, No. 6, December 1980.

Patel, E. "The case for centralised bargaining" in South African Labour Bulletin, Vol. 15, No. 4, November 1990.

Pillay, D., "To Hell with Councillors" in South African Labour Bulletin, Vol. 15, No. 2, 1990.

Pillay, D. & Bendix, W., "A Practical Approach to Conflict Management in Essential Services" in Industrial and Social Relations, Vol. 13, No's. 1 & 2, 1993.

Reddy, P.S & Sing, D., "Employer/Employee Relations in the South African Public Service: From Joint Consultation to Collective Bargaining." in South African Journal of Labour Relations, Vol. 10, Nos. 3 & 4, September/December 1988.

Regan, -, "The Study of Intergovernmental Relations within a State" in South African Institute of Public Administration, Vol.17, No. 2, 1982.

Rhodes, R., "Corporatism, Pay Negotiations and Local Government" in Public Administration, Vol. 63, Autumn 1985.

Roux, R., "Greater Unity in the Public Sector" in South African Labour Bulletin, Vol. 14, No. 2, June 1989.

Sing, D. & Bendix, W., "A Labour Relations Perspective of the Public Sector" in Industrial and Social Relations, Vol. 13, No's. 1 & 2, 1993.

Sing, D. & Maharaj, P., "The Employers' Organisation Movement in the Local Government Industry" in South African Journal of Labour Relations, Vol. 14, No. 3, September 1990.

Sing, D. & Penceliah, Y., "Developments in Labour Relations at the Local Government Level" in South African Journal of Labour Relations, Vol. 13, No. 4, December 1989.

Smith, B.C., "The Measurement of Decentralisation" in International Review of Administrative Sciences, No. 3, 1979.

Steadman, F., "Fitting the Forum to the Fuss" in Employment Law, Vol. 9, No. 2, 1993.

Thomas, D., "Should Public Sector Strikes be Outlawed?" in Municipal Review & AMA News, No. 701, October 1989.

Thompson, C., "Labour Law in a changing South Africa" in Employment Law, Vol. 7, No. 1, September 1990.

Thompson, C., "Essential Services and the Unfair Labour Practice" in Industrial Law Journal, Vol. 13, Part 3, 1992.

Trollip, T., "Appropriate Bargaining Units: A Guide for the Uninitiated" in Institute for Personnel Management Journal, August 1990b.

Warwick, D.P., "The Centralisation of Ecclesiastical Authority" in Concilium, Vol. 1, January 1973.

NEWSPAPERS:

"Problems of parallel IR systems" in **The Argus** (Cape Town) November 26, 1988.

"Shaping local government" in **The Argus** (Cape Town) October 17, 1992.

"Trade unionism will extend to the public sector" in **Business Day** (Johannesburg) June 9, 1987.

"Man-day loss leaders" in **Business Day** (Johannesburg) May 14, 1989.

"Growing Public sector has R48 billion payroll" in **Business Day** (Johannesburg) February 5, 1992.

"A fundamental challenge to apartheid" in **Financial Times** (Johannesburg) November 8, 1980.

"Church calls for labour policy change" in **Rand Daily Mail** (Johannesburg) November 9, 1980

"Public Sector Employment still growing" in **The Star** (Johannesburg) April 13, 1992.

"Against their own interest" in **Die Vaderland** (?) July 29, 1980.

"Strike lesson" in **Die Vaderland** (?) July 31, 1980.

PAMPHLETS:

Independent Mediation Society of South Africa, A Resource for Collective Bargaining, Johannesburg, November 1985.

Maller, J., Esop's Fables. Johannesburg: Labour and Economic Research Centre, November 1989.

PAPERS, REPORTS, RESEARCH DOCUMENTS AND OTHER:

Adams, R.J., "State Regulation of Unions and Collective Bargaining: An International Assessment of Determinants and Consequences" in The Role of the State in Industrial Relations. Paper presented to the 9th World Industrial Relations Congress, Sydney: Australia, 30th August - 3rd September 1992.

Alfred, M., Bargain, Don't fight!: A Manual of Industrial Relations Negotiating in South Africa. Johannesburg: Thomson Publications, 1984.

Andrew Levy and Associates, Annual Report on Labour Relations in South Africa, 1990/1991-1992/1993.

Bloch, R., "Arbitration" in Research Documents in Industrial Relations, No. 6, Graduate School of Business, University of Cape Town, 1989.

Brynard, D.J. "Development of a proforma management approach for the core public sector". Paper presented at the Annual Conference of the International Association of Schools and Institutes of Administration, Vienna, 7-10 July 1992.

Cameron, R., The Administration and Politics of the Cape Town City Council 1976-1986. Unpublished Master of Public Administration Thesis, University of Cape Town, 1986.

Cape Town City Council, Labour Relations Training Programme. Labour Relations Unit, 1990/1991.

Central Statistical Services, Department of Manpower, 1988-1993.

Childs, R., "The Changing Face of Industrial Relations in South Africa". Paper presented at the Western Province Branch of the South African Institute of Personnel Management, 28 October 1987.

Christie, S., "Collective Bargaining in the Public Service." Paper presented to the Africa Seminar, Centre for African Studies, University of Cape Town, May 27 1992.

Coetzee, W.A.J., "Orientation of Municipal Councillors and Leading Municipal Officials in a New Dispensation for Local Authorities" Proceedings of a symposium held at the University of Durban-Westville, 9-11 April 1985.

Craythorne, D., Metropolitan Municipal Government for Greater Cape Town. Unpublished thesis, University of Cape Town, 1982.

De Wet, L., Collective Bargaining at Local Government Level with particular reference to Natal. Unpublished Master of Public Administration thesis, University of Durban-Westville, 1987.

Douwes Dekker, L., "The Right to Strike" in Key Issues in Collective Bargaining, Witwatersrand: Institute for Industrial Relations, Series 4, Vol. 1, n.d.

Douwes Dekker, L., "Industrial relations in South Africa". Paper presented at the International Industrial Relations Association, 7th World Conference, Hamburg, 1-4 September 1986.

Hernandez, L., Strikes: Causes, Processes and Outcomes. Midland Chamber of Commerce, April 1983.

Hethy, L., "Industrial Relations in Eastern Europe: Recent developments and trends" in Recent trends in Industrial Relations Studies and Theory - General Report. International Industrial Relations Association, 8th World Congress: Brussels, 4-7 September, 1989.

Horwitz, F., Industrial Relations in South Africa: An Overview, Graduate School of Business, University of Cape Town, 1991b.

Institute for Industrial Relations, "What are Political Issues and what political tendencies currently exist within the Black trade Union Movement" (Part Two: Political Issues in the Workplace) in Key Issues in Collective Bargaining, Vol. 2, June 1988a.

Institute for Industrial Relations, Industrial Relations in South Africa Review, 1988b.

International Labour Office, Collective Bargaining: A Workers Education Manual. Geneva, 1986.

International Labour Organisation, "Collective Labour Relations" in World Labour Report: Employment and Labour Incomes, Government and its Employees, Statistical Appendix, Geneva: International Labour Organisation, Vol. 4, 1989a.

International Labour Organisation., ILO Principles: Standards and Procedures concerning Freedom of Association. Geneva: International Labour Organisation, 1989b.

Levy, D. in "Talkabout". South African Broadcasting Corporation, English programme, 13 June 1991.

Lockhard, D., "Local government" in International Encyclopedia of Social Sciences. Vol. 9, 1968, pp. 451-459.

Miles, M., "Responsible Strike Action" in Institute of Industrial Relations: Information Sheet, April, 1988.

Municipal Employers Organisation, 1988-1992.

Official SA Trade Unions Directory and Industrial Relations Handbook. 1991/1992.

Page,- & Goldsmith,-, "Centralisation and Decentralisation: A framework for comparative analysis" in Environment and Planning: Government and Policy, Vol. 3, 1985.

Poppleton, J., Labour Relations in Local Government. Institute of Town Clerks of Southern Africa, Twenty Eighth Conference: Pretoria, 4-6 June 1985.

Presidents Council Report, Report of the Committee For Constitutional Affairs on Decision-making and Conflict Resolution Mechanisms and Techniques in Constitutional Systems. PC 1/1990, 1990.

Rondinelli, D.A. et al., "Decentralisation in Developing Countries: A Review of Recent Experiences": World Bank Staff Working Paper, Washington, No. 581, 1984.

South African Institute of Public Administration, Vol. 27, No.1, 1992.

South African Institute of Race Relations, Race Relations Survey, Johannesburg, 1987/88.

Stieber, J., "Conflict and Co-operation in Public Service Labour Relations" in General Report for the International Industrial Relations Association, 7th World Congress, Hamburg, 1-4th September 1986.

Subbarao, A.V., "The Systems of Industrial Conflict Resolution", Paper presented at the 5th World Congress of the International Industrial Relations Association, Paris, France, September 3-7, 1979.

Swart, B., "Mediation in Industrial Disputes" in Research Documents in Industrial Relations, No. 5, Graduate School of Business, University of Cape Town, 1988.

Treu, T., *et al.* Public Service Labour Relations: Recent Trends and Future Prospects. A Comparative Survey of Seven Industrialised Market Economy Countries. Geneva: International Labour Organisation, 1987.

Trollip, T., "Strikes and lockouts and the process of collective bargaining" in Research Documents in Industrial Relations, 1990a.

Van Coller, D., "The Role of the Employers within the New Dispensation" in Research Documents in Industrial Relations, No. 1, Graduate school of Business, University of Cape Town, 1986.

Van den Bos, W., Module on Introduction to Public Administration. Course Reader: Pol 204S: Department of Political Studies, University of Cape Town, 1989.

Van der Merwe, P.J., "Future Issues Affecting South African Industrial Relations and Employers in Particular" in Research Documents in Industrial Relations, No. 6, Graduate School of Business, University of Cape Town, 1989.

Wiehahn, N., "Civil service should have a collective bargaining process" in HRM Yearbook. 1988.

Wood, G., Strikes and Stayaways in relation to Political developments in South Africa 1970-1987. Unpublished Masters thesis, University of Cape Town, 1989.

INTERVIEWS:

Interview, Cape Town City Council: E. Thorne, Deputy Director of Personnel, 2 April 1990.

Interview, Pretoria City Council: D. Bronkhorst, Labour Relations Officer, 12 July 1990.

Interview, Johannesburg City Council: H.J. Reyneke, Labour Relations Officer, 13 July 1990.

Interview, Kimberley City Council: J. Coetzee, Director of Personnel, 5 July 1991.

Interview, Durban Democratic Municipal Employees Society: S. Pillay, President, 10 July 1991.

Interview, Cape Town City Council: F. Roggerio, Labour Relations Officer, 4 April 1992.

TARGET GROUP:

The following list categorises questionnaire respondents according to occupation. It can be noted that the occupations listed below are those provided in the survey. The figure in brackets indicates the number of respondents in each category.

Employers:

Clerk - Personnel Services (1)
Control Personnel Officer (1)
Labour Relations Officer (1)
Personnel Officer (2)
Personnel Manager (4)
Personnel practitioner (1)
Industrial Relations Officer (1)
Senior Personnel Officer (5)
Assistant Head - Personnel Services (1)
Chief Personnel Services (1)
Deputy Director (1)
Director (1)

Trade unions:

Collective Bargaining Officer (1)
Vice-chairman (1)
Understudy to the General Secretary (1)
Deputy Secretary (1)
General Secretary (1)
Chairman (4)
President (3)

The State:

Deputy Director (1)
Assistant Secretary (1)
Assistant Town Secretary (1)
Assistant Director (1)
Director (1)

STATE QUESTIONNAIRE

Provided is a list of short-answer questions. Please tick the relevant boxes or comment where required. Additional space is provided at the end of the questionnaire for your clarification.

1. Occupation:

2. Broadly speaking, how would you describe present labour relations in South African local government:

- a) Cooperative/ good []
- b) Grudging/ accepting []
- c) Hostile/ bad []

3. What role do you feel the state should play as regulator of local government labour disputes?

- a) Interventionary role []
- b) Advisory role []
- c) No role []

4. Which level of collective bargaining do you consider most appropriate for settling labour disputes? Why?

- a) Central level []
- b) Local/ organisational level []
- c) A mix of both levels []

(Kindly justify at the end of the questionnaire)

5. What causes would you attribute to the recent upsurge in local government labour disputes?

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....

6. A major area of contention is the issue of the "right to strike". Which of the following options do you consider most suitable in the case of local government?

- a) Allowing an unlimited "right to strike" ... []
- b) Allowing a limited "right to strike" []
- c) Prohibiting any "right to strike" []

(Kindly justify at the end of the questionnaire)

ADDITIONAL SPACE FOR COMMENTARY

[illegible]

THANK YOU FOR YOUR TIME AND EFFORT!

EMPLOYER QUESTIONNAIRE

Provided is a list of short-answer questions. Please tick the relevant boxes or comment where required. **Additional space is provided at the end of the questionnaire** for your clarification.

1. Occupation:
2. How would you describe present labour relations in your local authority:
- a) Cooperative/ good []
 - b) Grudging/ accepting []
 - c) Hostile/ bad []

3. How often are the following issues collectively bargained for in your local authority? Please rank according to the scale provided below:

[1= very often, 2= often, 3= not so often, 4= hardly ever]

- a) Wages []
- b) Conditions of service []
- c) Union rights []
- d) Disciplinary issues []
- e) Dispute settlement procedures ... []

Other/s [please rank]:
.....

4. Do you feel that collective bargaining should take place at the central level (i.e. national), local level (i.e. within your local authority) or at both levels?
- a) Central level []
 - b) Local level []
 - c) Both levels []

(Kindly justify your answer at the end of the questionnaire)

5. What were/are the most common causes for strikes at your local authority in the past five (5) years?
- 1.....
 - 2.....
 - 3.....
 - 4.....

(Please list any further "triggers" in the space provided at the end of the questionnaire)

6. Describe briefly the steps your local authority undertakes to follow if a strike is declared:

- 1.....
- 2.....
- 3.....
- 4.....

(If any additional measures are followed kindly note these in the space provided at the end of the questionnaire)

7. Which of the following options do you consider most feasible for sound labour relations in terms of the "right to strike"?:

- a) Allowing an unlimited "right to strike" ... []
- b) Allowing a limited "right to strike" []
- c) Prohibiting any "right to strike" []

(Kindly justify at the end of the questionnaire)

8. Rank the following mechanisms and structures according to how effective you consider them to be in settling labour disputes at your local authority?:

[1 = very effective, 2 = effective, 3 = average
4 = not so effective, 5 = ineffective/ useless]

Arbitration = []
Conciliation = []
Mediation = []

Works Councils = []
Industrial Councils = []
Conciliation Boards = []
Industrial Court/ Judicial system ... = []

9. Broadly speaking, how successful are negotiations between the local authority and the unions within it?

- a) Very successful []
- b) Normally successful []
- c) Hardly ever successful ... []
- d) N/A []

10. Is there any input from the unions in your local authority concerning matters relating to employee policies and practices?

- a) Yes ... []
- b) No []

(Kindly clarify your answer at the end of the questionnaire)

11. Local Government is broadly defined as being an "essential service" sector. Do you agree with this definition?

- a) Yes ... []
b) No []

(Kindly explain in the space provided at the end of the questionnaire)

ADDITIONAL SPACE FOR COMMENTARY

THANK YOU VERY MUCH FOR YOUR TIME AND EFFORT!

TRADE UNION QUESTIONNAIRE

Provided is a list of short-answer questions. Please tick the relevant boxes or comment where required. **Additional space is provided at the end of the questionnaire** for your clarification.

1. Position in Trade Union:

2. How would you describe present labour relations in your Local Authority:

- a) Cooperative/ good []
- b) Grudging/ accepting []
- c) Hostile/ bad []

3. How often are the following issues collectively bargained for with your Local Authority? Please rank according to the scale provided below:

[1= very often, 2= often, 3= not so often, 4= hardly ever]

- a) Wages []
- b) Conditions of service []
- c) Union rights []
- d) Disciplinary issues []
- e) Dispute settlement procedures ... []

Other/s [please rank]:

4. Do you feel that collective bargaining should take place at the central level (ie national), local level (ie within your council) or at both levels?

- a) Central level []
- b) Local level []
- c) Both levels []

(Kindly justify at the end of the questionnaire)

5. Has your union declared a strike over the past five (5) years?

- a) Yes ... []
- b) No []

If Yes, please list the main reasons why?:

- 1.....
- 2.....
- 3.....

6. Which of the following "right to strike" options do you favour for promoting a healthy labour relations environment within your Local Authority?:

- a) Allowing an unlimited "right to strike" ... []
- b) Allowing a Limited "right to strike" []
- c) Prohibiting any "right to strike" []

(Kindly justify at the end of the questionnaire)

7. Broadly speaking, what course of action does your Local Authority undertake when strikes are declared by unions within it?

- a) Call for military/ police intervention ... []
- b) Seek a court interdict []
- c) Attempt to negotiate []
- d) Do nothing []
- e) N/A []

Other reactions:
.....

8. Rank the following mechanisms and structures according to how effective you consider them to be for settling disputes at your Local Authority?:

[1 = very effective, 2 = effective, 3 = average
4 = not so effective, 5 = ineffective/ useless]

Arbitration = []
Conciliation = []
Mediation = []

Works Councils = []
Industrial Councils = []
Conciliation Boards = []
Industrial Court/ Judicial system ... = []

9. Broadly speaking, how successful are negotiations between your union and the Local Authority?:

- a) Usually successful []
- b) Sometimes successful []
- c) Hardly ever successful ... []
- d) Not applicable..... []

10. Does the Local Authority ever consult with your union in matters concerning employment policies and practices (e.g. recruitment and selection policies, salary reviews)?

- a) Yes ... []
- b) No []

11. Local Government is broadly defined as being an "essential service" sector. Do you agree with this definition?

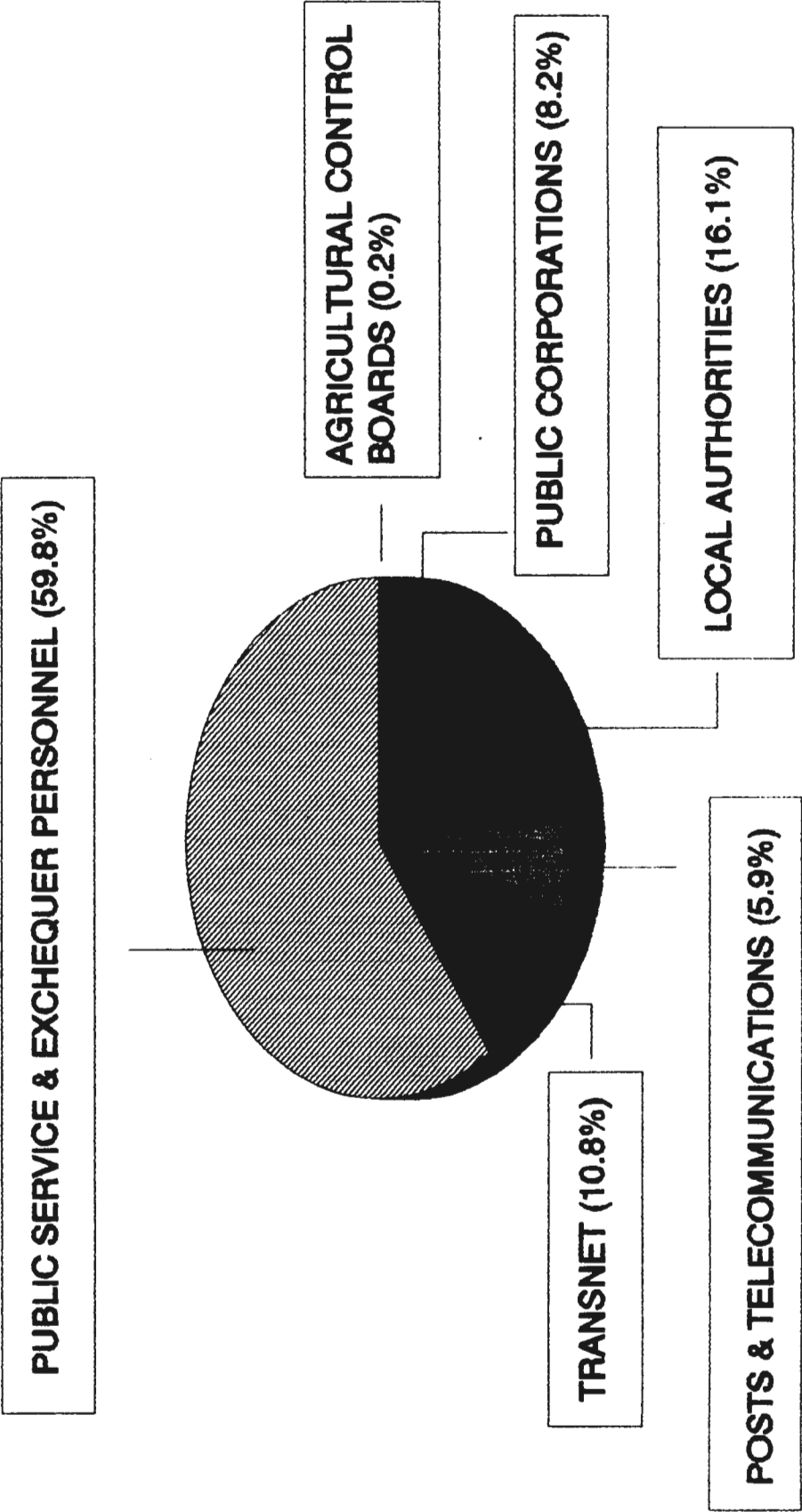
- a) Yes ... []
b) No []

(Kindly explain in the space provided at the end of the questionnaire)

ADDITIONAL SPACE FOR COMMENTARY

THANK YOU VERY MUCH FOR YOUR TIME AND EFFORT!

THE SOUTH AFRICAN PUBLIC SECTOR (1989)
COMPOSITION AND PERCENTAGE EMPLOYMENT



MUNICIPAL AND LOCAL AUTHORITY

Amalgamated Municipal Employees Association	FTTU
Bloemfontein Municipal Black Workers Union	FTTU
Bloemfontein Munisipale Werknemersvereniging	U.A.
Cape Town Municipal Professional Staff Association	U.A.
Democratic Integrated Municipal Employees Society	U.A.
Durban Municipal Employees Society	U.A.
Durban Municipal Professional Staff Association	U.A.
Durban Municipal Workers Union	U.A.
East Cape Local Authorities Employees Union	U.A.
East London Municipal Workers Union	FTTU
East Rand Municipal Workers Union	U.A.
Federation of Municipality, Health and Allied Workers	Nactu
Johannesburg Municipal Combined Employees Union	U.A.
Johannesburg Municipal Employees Association	U.A.
Johannesburg Municipal Water Works Mechanics Union	U.A.
Johannesburg Municipal Workers Union	U.A.
Johannesburg Transport and Municipal Workers Union	U.A.
Kimberley Association of Municipal Employees	U.A.
Kimberley Municipal Workers Union	U.A.
Municipal and Allied Workers Union	U.A.
Municipal, State, Farm and Allied Workers Union	U.A.
Natal Association of Employees of Black Local Authorities	U.A.
National Union of Employees of Local Authorities	U.A.
Paarl Munisipale Werkersvereniging	U.A.
Personeelvereniging van die Raad op Plaaslike Bestuursaanbevelende	U.A.
Queenstown Munisipale Werknemersunie	U.A.
S.A. Association of Municipal Employees	Fedsal
S.A. Emergency Services Union	U.A.
S.A. Municipal Workers Union	Cosatu
Union of Johannesburg Municipal Workers	U.A.
Vereniging van Administratiewe Hoofbeamptes van Plaaslike Owerhede	U.A.
Verulam Indian Municipal Employees Association	U.A.
Walvisbaai Munisipale Personeelvereniging	U.A.
Western Province Local Authority Workers Association	U.A.

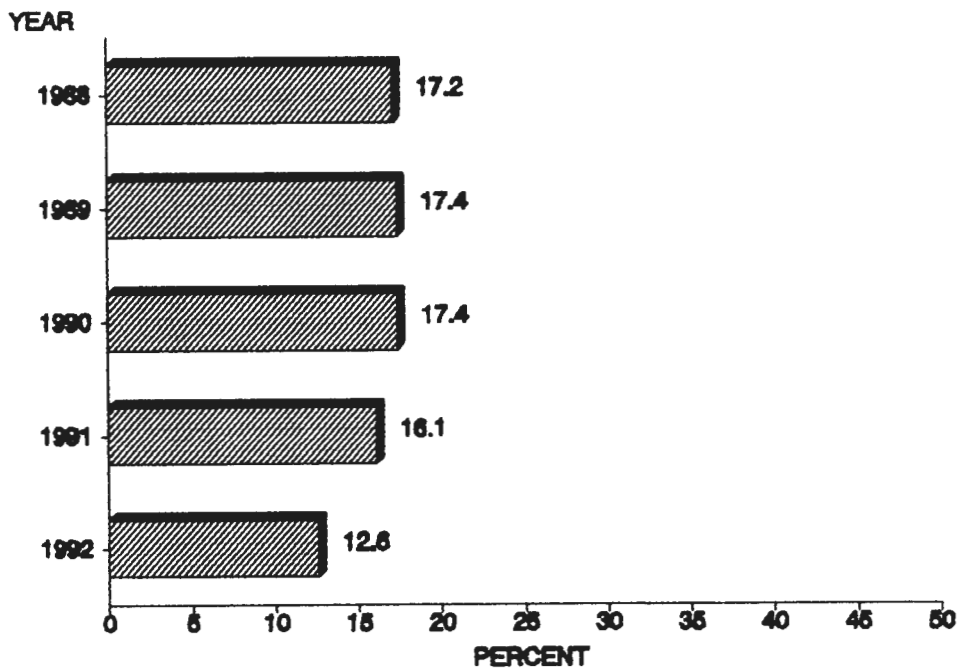
**SOURCE: OFFICIAL TRADE UNIONS DIRECTORY AND INDUSTRIAL
RELATIONS HANDBOOK. (1993:114-115)**

Table 1: Strikes in South Africa (1972-1992).



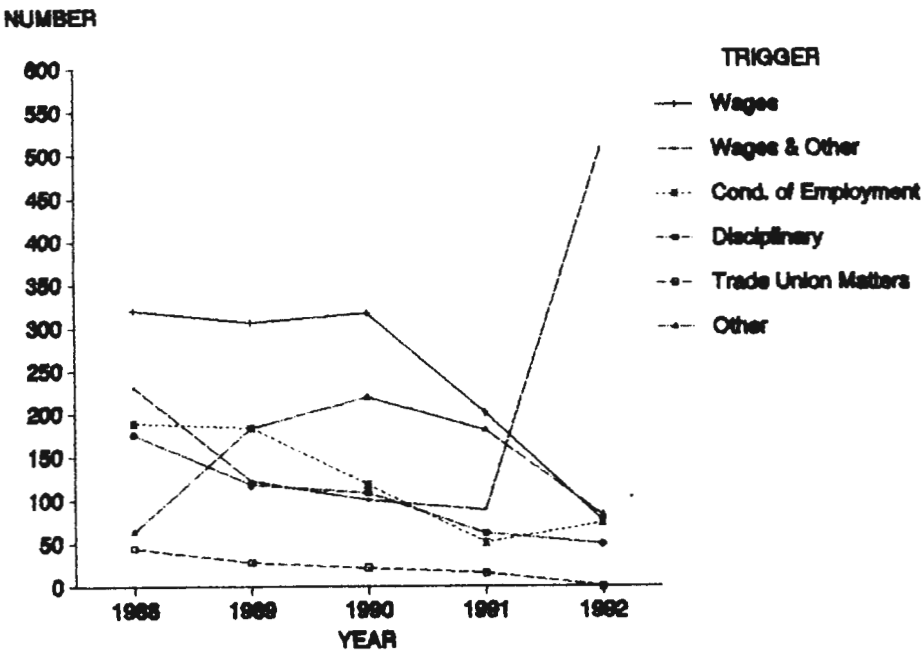
SOURCE: Bendix (1992:549) and Central Statistical Services, South African Labour Statistics. Pretoria: 1993.

Table 2: Average wage settlements in South Africa (1988-1992).



ADAPTED FROM: ANDREW LEVY & ASSOCIATES, 1988/1989 - 1992/1993.

Table 3: Industrial action triggers in South Africa (1988-1992).



SOURCE: Central Statistical Services, South African Labour Statistics. Pretoria: 1993.

Table 4: Relative frequency of strike triggers in South Africa (1988-1992).

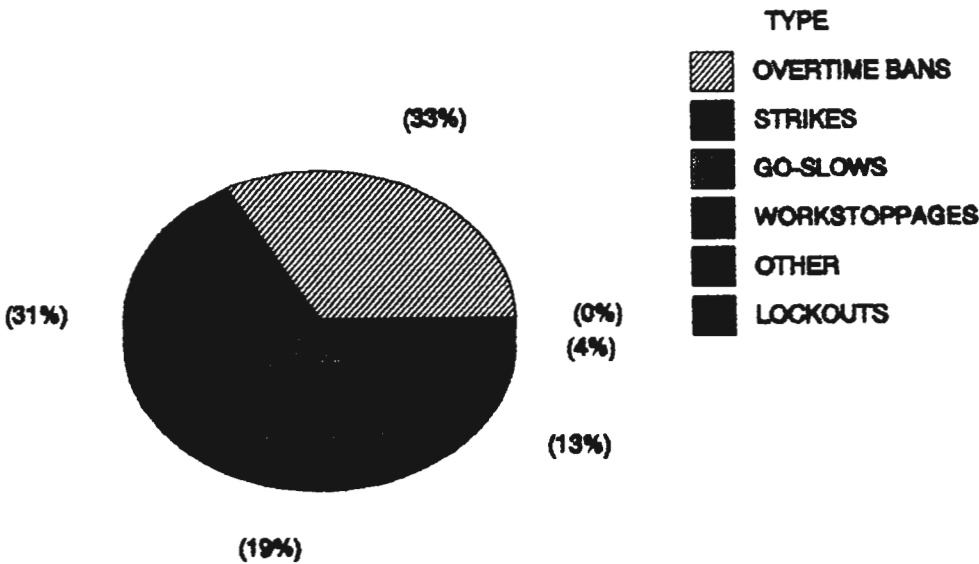


Table 5: Average frequency of categories of industrial action in South Africa (1988-1992).

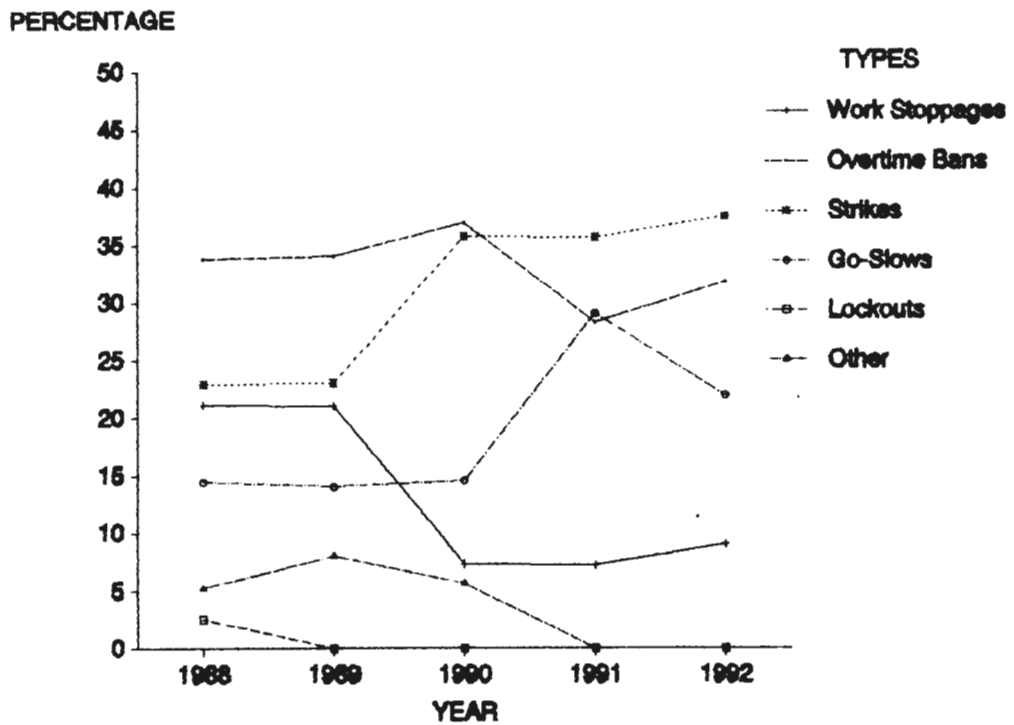
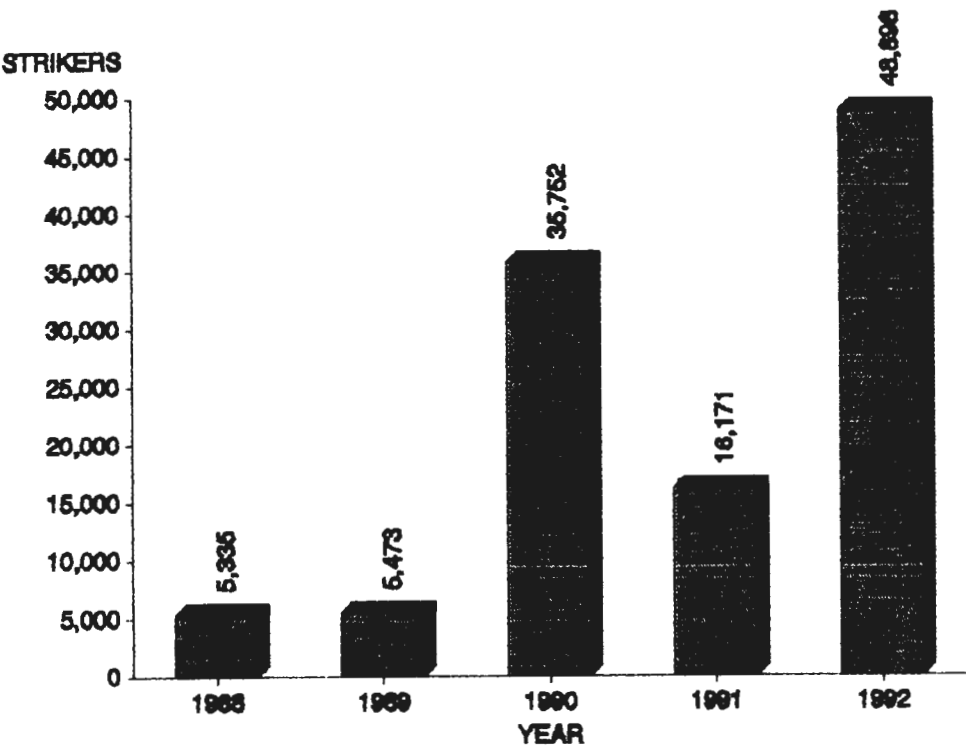


Table 1: Number of striking workers in local authorities (1988-1992).



SOURCE: Municipal Employers Organisation, 1988-1992.

Table 1: Wages as a cause of industrial action in South African local authorities (% manhours lost, 1988-1992).

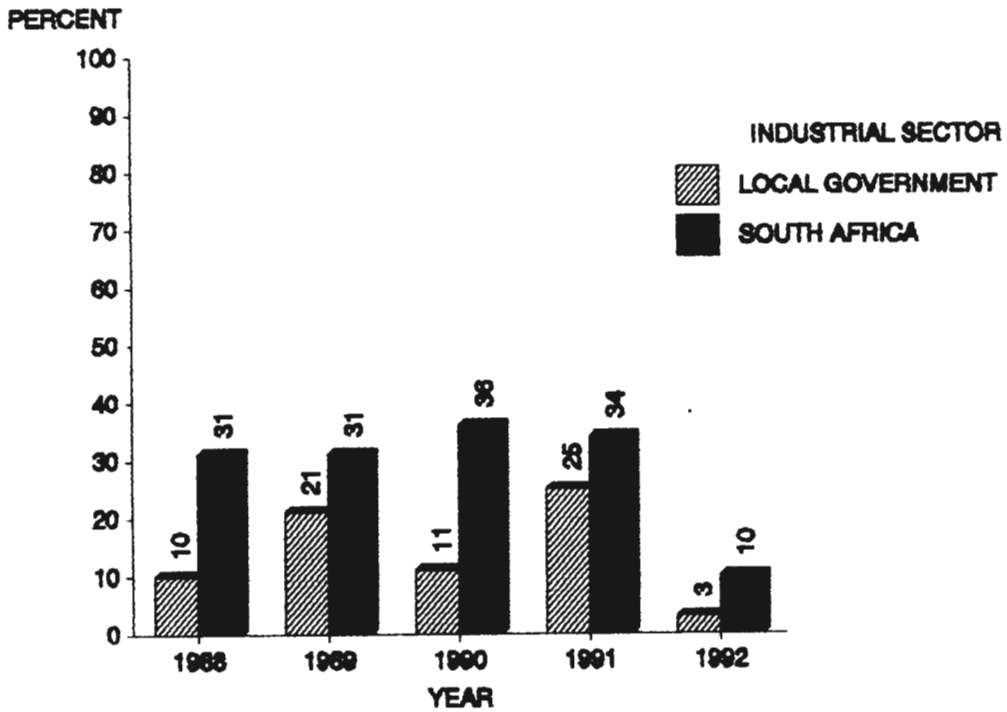


Table 2: "Wages and other" issues as a cause of industrial action in South African local authorities (% man-hours lost, 1988-1992).

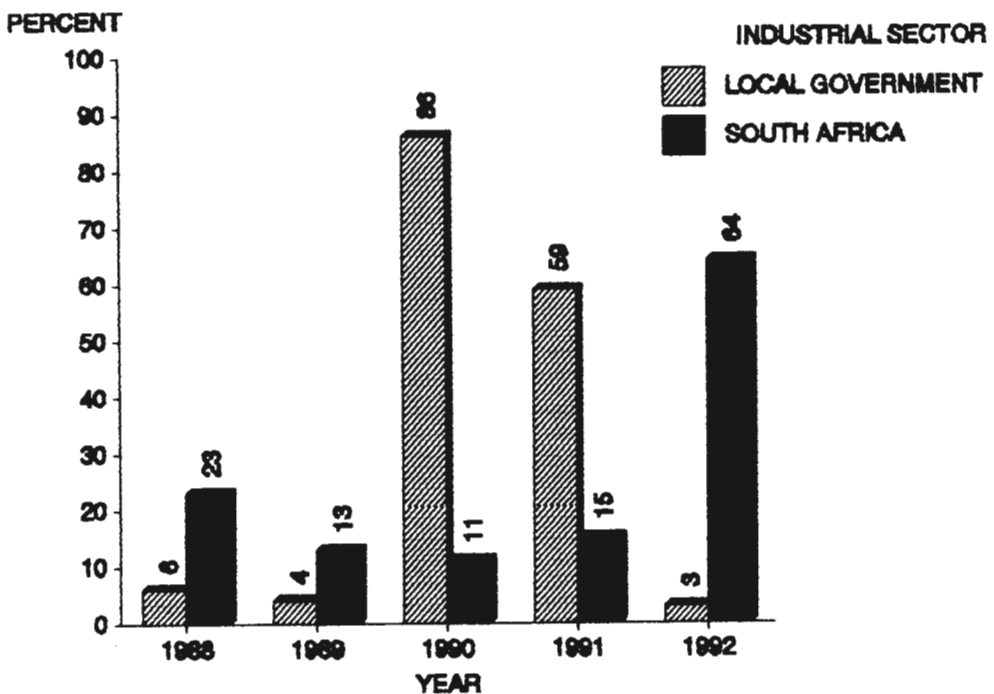


Table 3: Work conditions as a cause of industrial action in South African local authorities (% man-hours lost, 1988-1992).

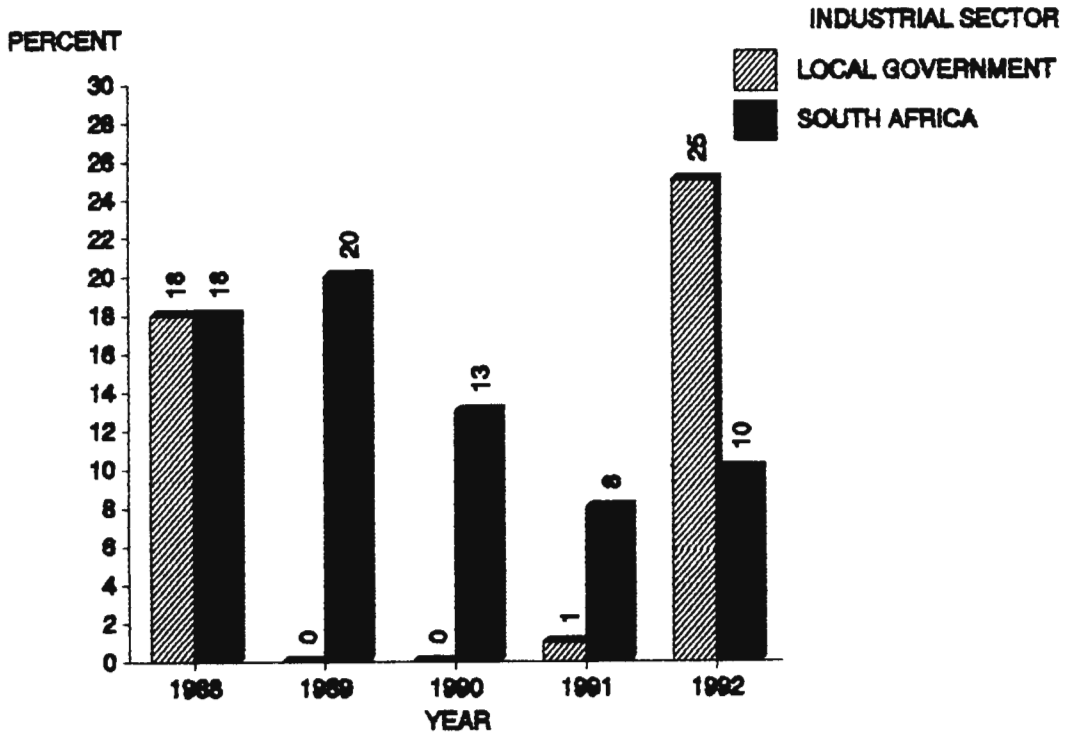
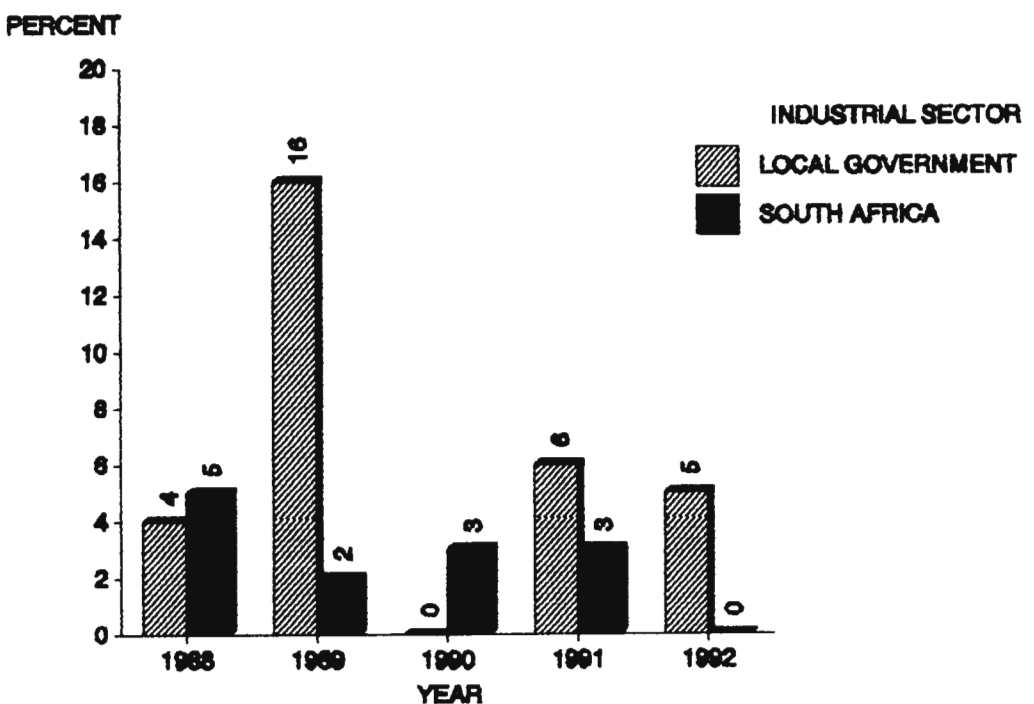
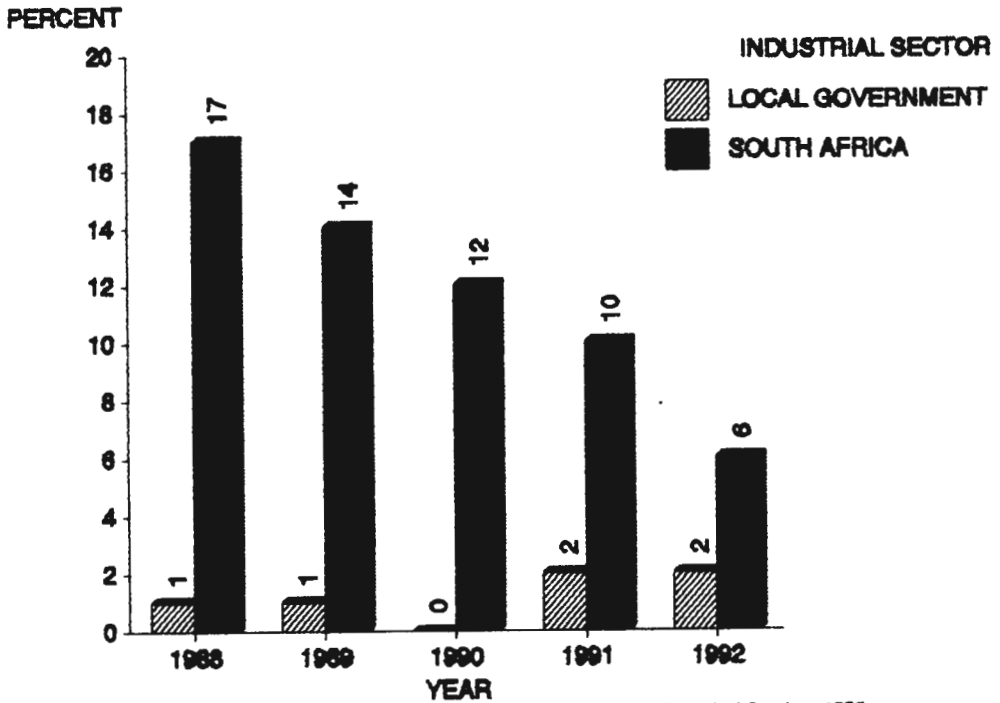


Table 4: Trade union matters as a cause of industrial action in South African local authorities (% man-hours lost, 1988-1992).



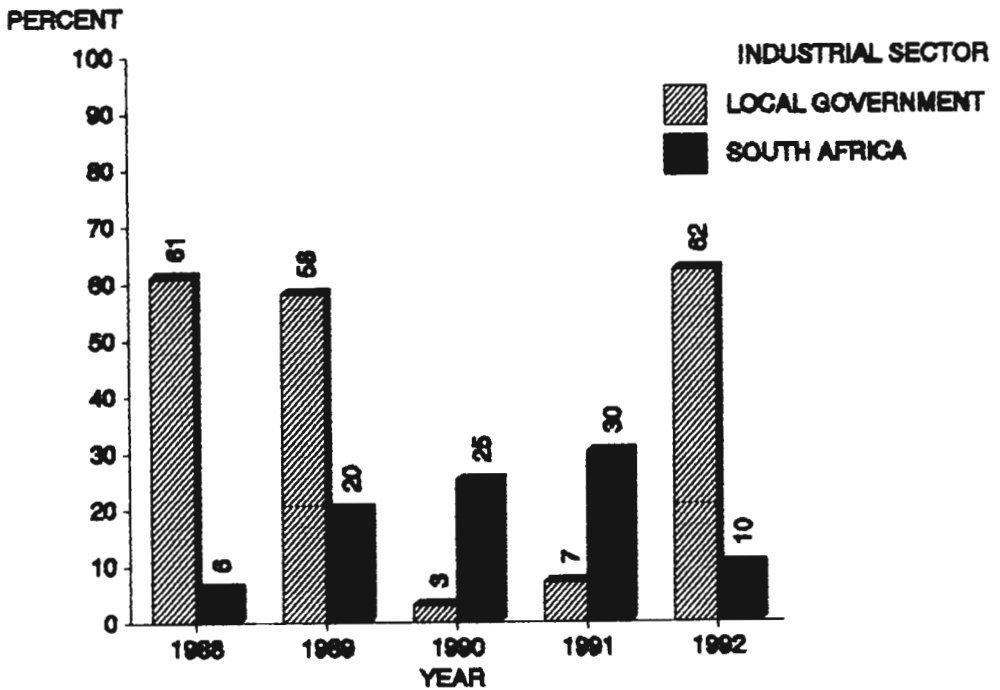
SOURCE: Municipal Employers Organisation, 1988-1992; Central Statistical Services, 1993.

Table 5: Disciplinary issues as a cause of industrial action in South African local authorities (% man-hours lost, 1988-1992).



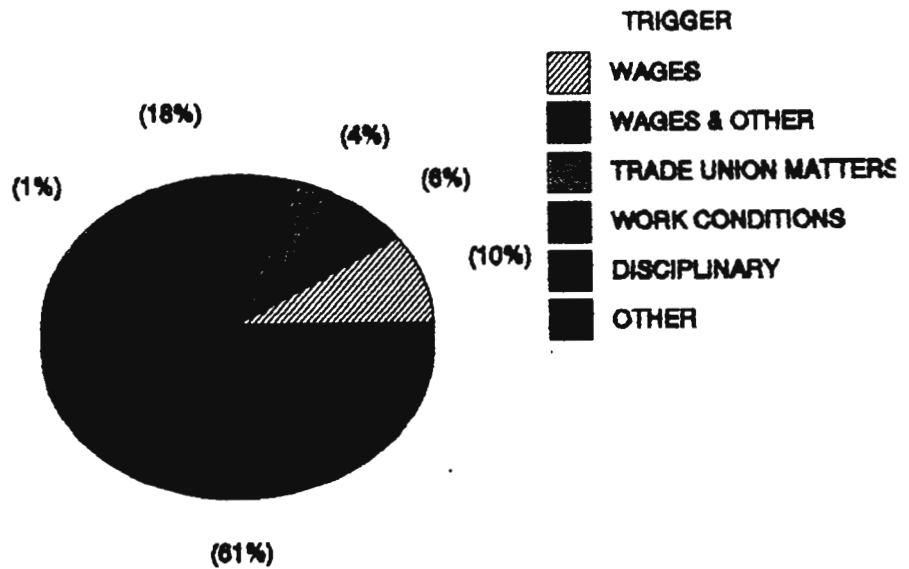
SOURCE: Municipal Employers Organisation, 1988-1992; Central Statistical Services, 1993.

Table 6: "Other" issues as a cause of industrial action in South African local authorities (% man-hours lost, 1988-1992).



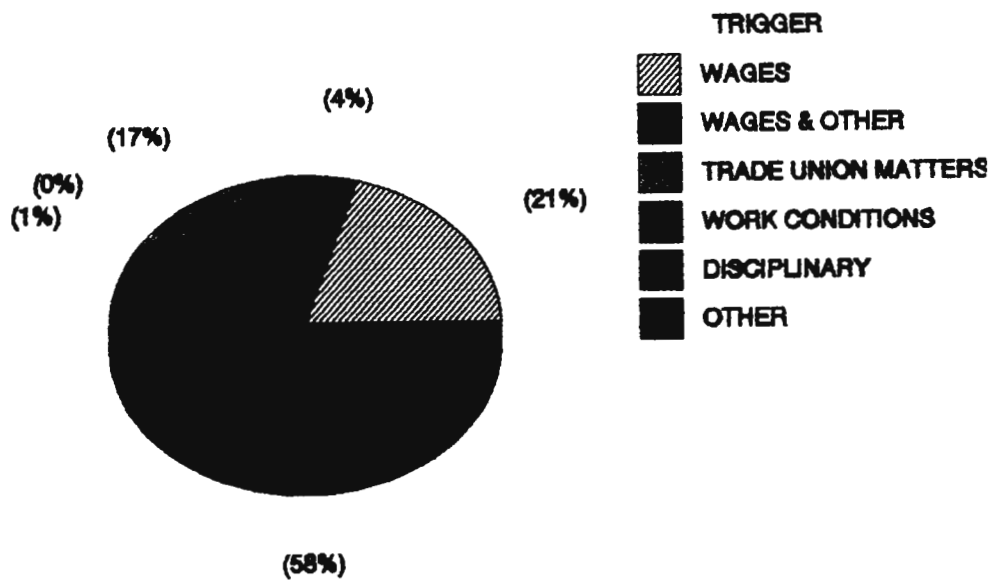
SOURCE: Municipal Employers Organisation, 1988-1992; Central Statistical Services, 1993.

Table 1: Industrial action triggers in South African local authorities during 1988.



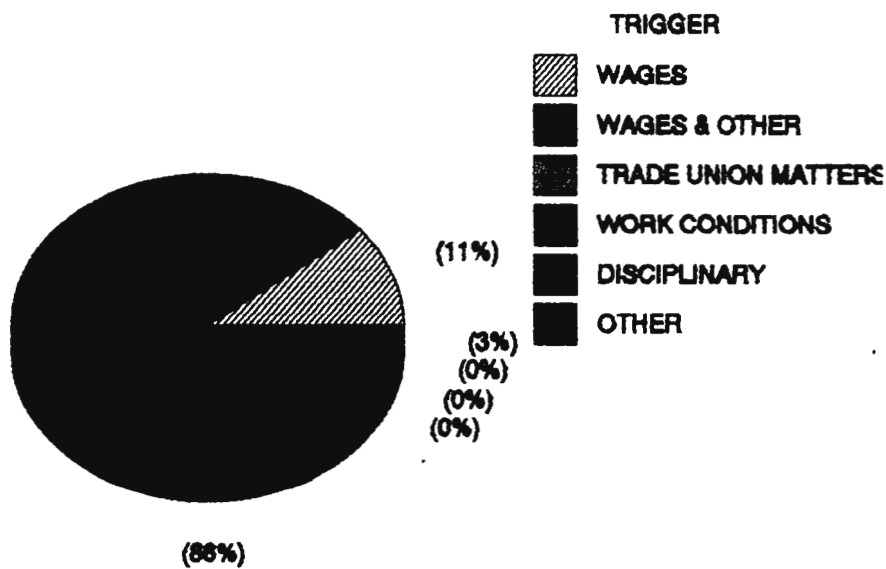
SOURCE: Municipal Employers Organisation, 1988.

Table 2: Industrial action triggers in South African local authorities during 1989.



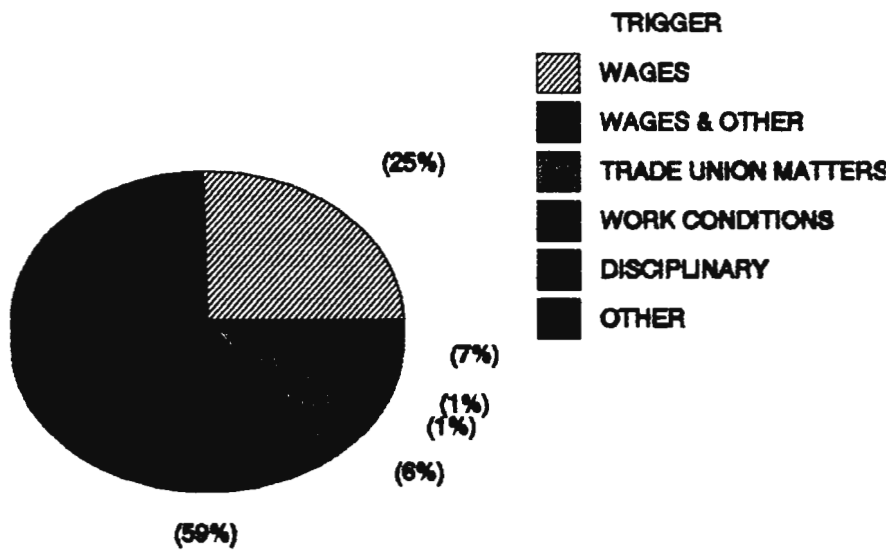
SOURCE: Municipal Employers Organisation, 1988.

Table 3: Industrial action triggers in South African local authorities during 1990.



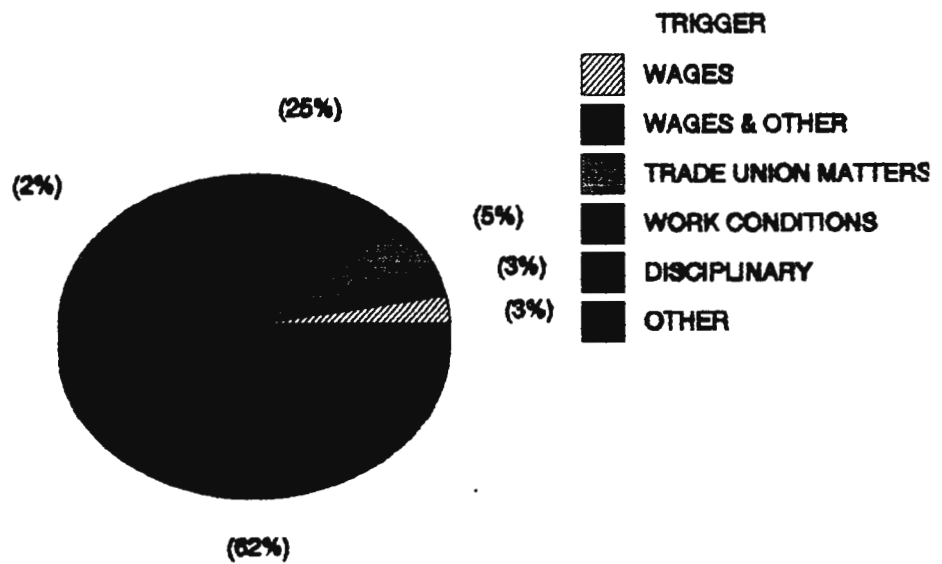
SOURCE: Municipal Employers Organisation, 1990.

Table 4: Industrial action triggers in South African local authorities during 1991.



SOURCE: Municipal Employers Organisation, 1991.

Table 5: Industrial action triggers in South African local authorities during 1992.



SOURCE: Municipal Employers Organisation, 1992.

Table 1: Industrial action triggers in South African local authorities (1988-1992) (% man-hours lost).

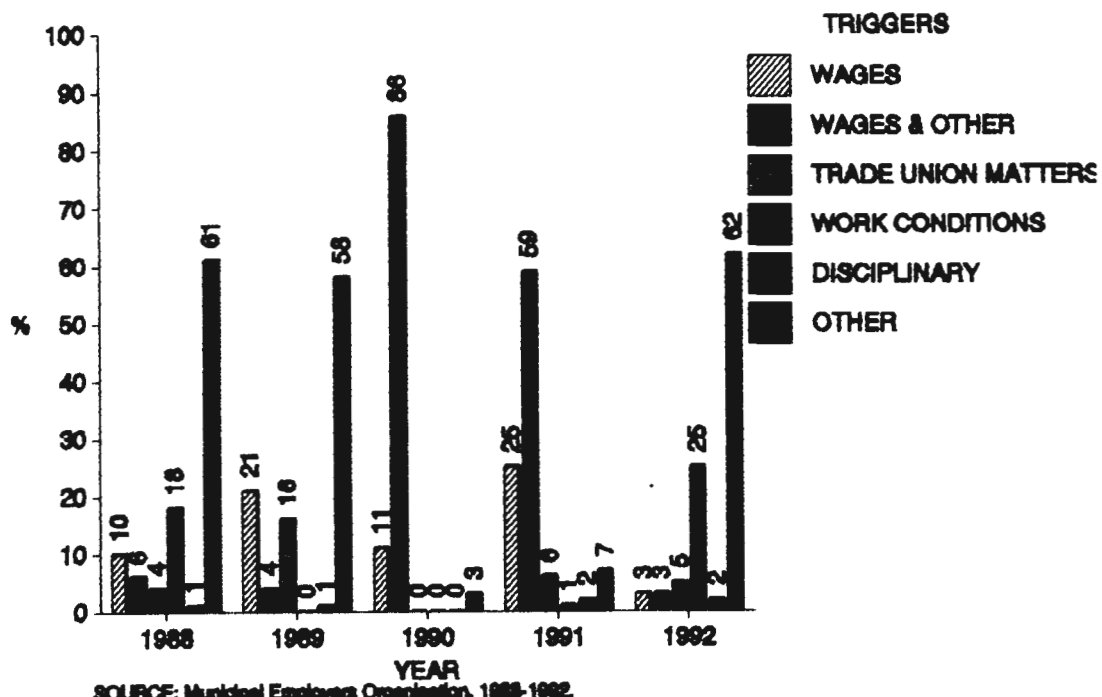
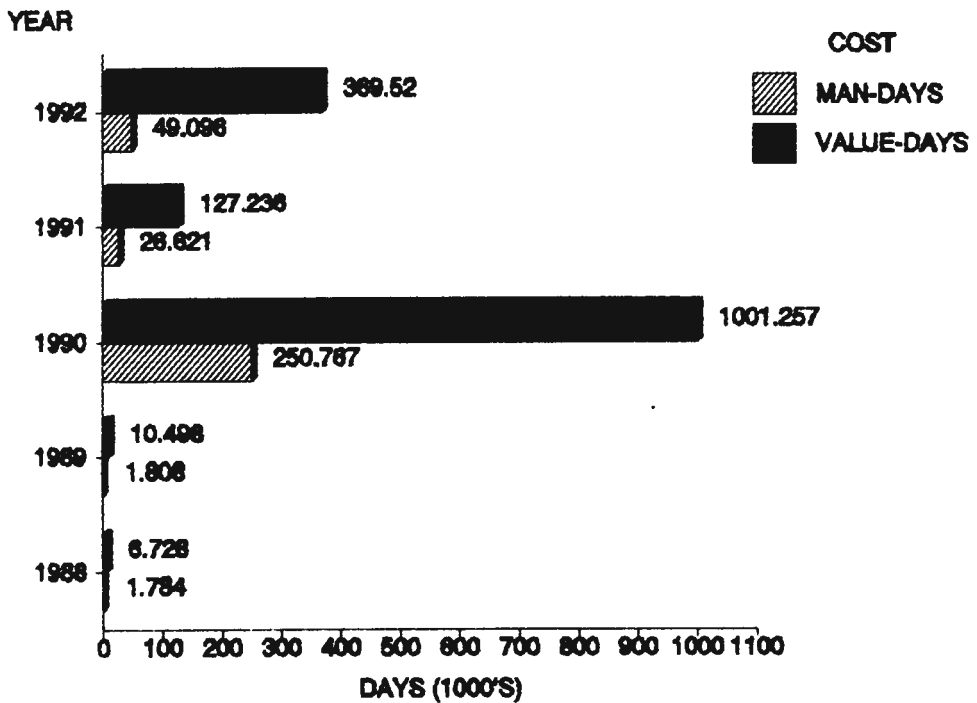


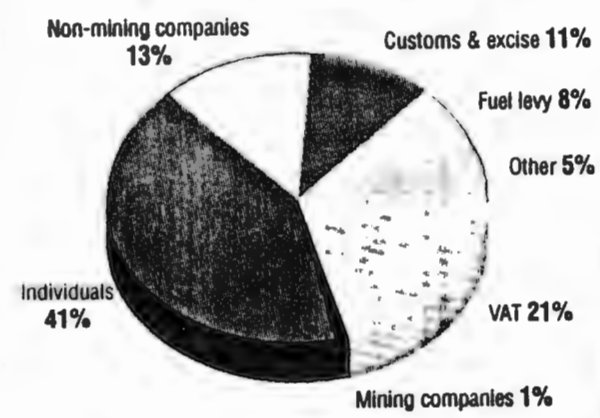
Table 1: Costs of industrial action to South African local authorities (1988-1992) (number of man-days and value-days lost).



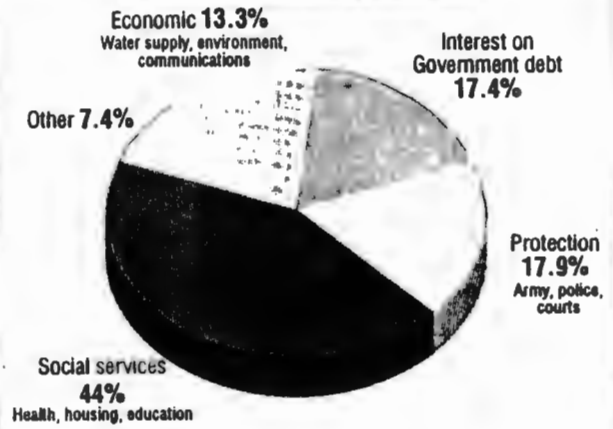
SOURCE: Municipal Employers Organisation, 1988-1992.

Where the money comes from and where it goes

Composition of total revenue



Total revenue expenditure



SOURCE: 21/03/1993

Wage & salary increases relative to inflation



SOURCE: THE ARGUS 7/03/1993

POSTSCRIPT

Since the submission of this thesis, South Africa has undergone a poignant political transformation. In the field of labour relations, as noted in the Conclusion, the challenges of consensus-based practices have been undermined in local government by a degree of uncertainty and apprehension regarding the future of such institutions and their personnel.

The labour movement faces a host of pressures in separating its new responsibilities and interests from those of the incumbent Government.

Firstly, as a legitimate institution, the distinction between the role of the labour movement and Governance requires refinement. In particular, this notion is challenged by a tradition of confrontational dynamics adopted by trade unions during the previous political era. Secondly, labour focus on socio-economic issues is convoluted by historical injustices which still prevail and require redress. Importantly though, once more this challenge demands an understanding or compromise between due political process or national interest and labour demands. Thirdly, a complicated and bureaucratised jurisprudence undermines efficiency and a just legal system. This confusion in turn raises the opportunity for undermining the fundamental tenets of labour relations and opens the window of opportunity for self-privilege. Fourthly, and finally, organisational changes requiring transformation, such as affirmative action, need to be dealt with in a sensitive, timeous and fair manner. Consequently, in the final analysis labour relations based on consensus-based practices in South African local government provide the opportunity for such changes within the framework of justice founded on the notion of best-possible resolutions rather than coercive contest.
